



***ROANOKE CITY COUNCIL
REGULAR SESSION***

***MAY 20, 2002
2:00 P.M.***

CITY COUNCIL CHAMBER

AGENDA FOR THE COUNCIL

1. Call to Order--Roll Call.

The Invocation will be delivered by The Reverend Marion G. Harris, Director, Virginia Evangelizing Fellowship.

The Pledge of Allegiance to the Flag of the United States of America will be led by Mayor Ralph K. Smith.

Welcome. Mayor Smith.

NOTICE:

Meetings of Roanoke City Council are televised live on RVTN Channel 3. Today's meeting will be replayed on Channel 3 on Thursday, May 23, 2002, at 7:00 p.m., and Saturday, May 25, 2002, at 4:00 p.m. Council meetings are now being offered with closed captioning for the hearing impaired.

ANNOUNCEMENTS:

THE PUBLIC IS ADVISED THAT MEMBERS OF COUNCIL RECEIVE THE CITY COUNCIL AGENDA AND RELATED COMMUNICATIONS, REPORTS, ORDINANCES AND RESOLUTIONS, ETC., ON THE THURSDAY PRIOR TO THE COUNCIL MEETING TO PROVIDE SUFFICIENT TIME FOR REVIEW OF INFORMATION. CITIZENS WHO ARE INTERESTED IN OBTAINING A COPY OF ANY ITEM LISTED ON THE AGENDA MAY CONTACT THE CITY CLERK'S OFFICE, ROOM 456, NOEL C. TAYLOR MUNICIPAL BUILDING, 215 CHURCH AVENUE, S. W., OR CALL 853-2541.

THE CITY CLERK'S OFFICE NOW PROVIDES THE MAJORITY OF THE CITY COUNCIL AGENDA ON THE INTERNET FOR VIEWING AND RESEARCH PURPOSES. TO ACCESS AGENDA MATERIAL, GO TO THE CITY'S HOMEPAGE AT WWW.ROANOKEGOV.COM, CLICK ON THE ROANOKE CITY COUNCIL ICON, CLICK ON MEETINGS AND AGENDAS, AND DOWNLOAD THE ADOBE ACROBAT SOFTWARE TO ACCESS THE AGENDA.

ALL PERSONS WISHING TO ADDRESS COUNCIL ARE REQUESTED TO REGISTER WITH THE STAFF ASSISTANT WHO IS LOCATED AT THE ENTRANCE TO THE COUNCIL CHAMBER. ON THE SAME AGENDA ITEM, ONE TO FOUR SPEAKERS WILL BE ALLOTTED FIVE MINUTES EACH, HOWEVER, IF THERE ARE MORE THAN FOUR SPEAKERS, EACH SPEAKER WILL BE ALLOTTED THREE MINUTES.

ANY PERSON WHO IS INTERESTED IN SERVING ON A CITY COUNCIL APPOINTED AUTHORITY, BOARD, COMMISSION OR COMMITTEE IS REQUESTED TO CONTACT THE CITY CLERK'S OFFICE AT 853-2541 TO OBTAIN AN APPLICATION.

2. PRESENTATIONS AND ACKNOWLEDGMENTS:

Request of Council Member William D. Bestpitch to introduce measures regarding a contribution to the National D-Day Memorial; and memorializing the late Donald McArthur Young, a Roanoke native, who lost his life as a result of the September 11 attack on the Pentagon.

P. 10;
R. 11;
R. 13

A resolution expressing gratitude to John H. Parrott for his years of service to the Hotel Roanoke Conference Center Commission.

P. 15

Proclamation declaring the week of May 19 – 25, 2002 as Emergency Medical Services Week.

P. 17

Announcement of the 2002 Award of Excellence from the Clean Valley Council.

3. CONSENT AGENDA

ALL MATTERS LISTED UNDER THE CONSENT AGENDA ARE CONSIDERED TO BE ROUTINE BY THE MEMBERS OF CITY COUNCIL AND WILL BE ENACTED BY ONE MOTION. THERE WILL BE NO SEPARATE DISCUSSION OF THE ITEMS. IF DISCUSSION IS DESIRED, THE ITEM WILL BE REMOVED FROM THE CONSENT AGENDA AND CONSIDERED SEPARATELY.

- C-1 A communication from Evelyn S. Lander submitting her resignation as a member of the Roanoke Valley Alleghany Regional Commission, effective immediately.

P. 18

RECOMMENDED ACTION: Accept the resignation and receive and file the communication.

- C-2 Reports of qualification of the following persons:

Darlene L. Burcham as a member of the Hotel Roanoke Conference Center Commission for a term ending April 12, 2006; and

James C. Hale for a term ending March 31, 2003; Mark S. Lawrence and David Nixon for terms ending March 31, 2004; and Brian M. Shepard for a term ending March 31, 2005, as members of the Parks and Recreation Advisory Board.

RECOMMENDED ACTION: Receive and file.

REGULAR AGENDA

4. PUBLIC HEARINGS: NONE.

5. PETITIONS AND COMMUNICATIONS: NONE.

6. REPORTS OF OFFICERS:

a. CITY MANAGER:

BRIEFINGS: None.

ITEMS RECOMMENDED FOR ACTION:

1. A communication recommending execution of Change Order No. 2 to the contract with Mid Eastern Builders, Inc., for relocation of the raw water pump manhole and strainer box at the Crystal Spring Water Treatment (Filtration) Plant, in the amount of \$108,216.00.
2. A communication recommending rejection of the proposal of NAPA Auto Parts for turnkey parts operation in the City's Fleet Management Division.
3. A communication recommending the use of competitive negotiation as the method to secure vendors to provide telephone survey services.

P. 19; O. 21

P. 22; R. 24

P. 25; R. 27

- | | | |
|----|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------|
| 4. | A communication recommending that Market Street from Salem Avenue to Church Avenue, S. E., and Wall Street from Salem Avenue to Campbell Avenue, S. E., be closed to the public as a right-of-way for vehicular and pedestrian traffic from 6:30 p.m. – 3:00 a.m., for outdoor dining purposes. | P. 29;
O. 31 |
| 5. | A communication recommending approval of a portion of the Muse Spring property to be used as a well site for a water supply system for the City; and that the City Manager be authorized to execute a well dedication document. | P. 33;
O. 35 |
| 6. | A communication recommending execution of an agreement with the Virginia Department of Forestry, in connection with an Urban and Community Forestry Grant, in the amount of \$15,000.00; and appropriation of funds. | P. 37;
B/O 40;
R. 41 |
| 7. | A joint communication from the City Manager and the Director of Finance with regard to the Restatement and Amendment of the City of Roanoke Pension Plan. | P. 42;
O. 44 |
| 8. | A communication recommending execution of an agreement with the Virginia Department of Environmental Quality for a Notice of Use Limitation for Waste, in connection with Unit 2, Middle Lot, Public Works Service Center. | P. 81;
O. 88 |
| 9. | A communication with regard to a late payment penalty for parking tickets. | P. 89;
O. 91 |

7. REPORTS OF COMMITTEES:

- | | | |
|----|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------|
| a. | A communication from the Roanoke City School Board requesting appropriation of funds to various school accounts; and a report of the Director of Finance recommending that Council concur in the request. | P. 93;
B/O 97 |
|----|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------|

8. UNFINISHED BUSINESS:

- | | | |
|----|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------|
| a. | A communication from the City Manager with regard to amendment to the Comprehensive Plan to include the Outlook Roanoke Plan. (The matter was tabled at the February 19, 2002 meeting of Council.) | P. 101;
R. 109 |
|----|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------|

- b. Ordinance No. 35818, on second reading, amending, repealing or replacing proffered conditions authorized by Ordinance No. 32294-121994 presently binding upon Official Tax No. 2761409, and rezoning Official Tax No. 2761409 from RS-3, Residential Single Family, Low Density District, and C-2, General Commercial District, to C-2, General Commercial District, subject to certain conditions proffered by the applicant; and rezoning Official Tax No. 2761421 from RS-3, Residential Single-Family, Low Density District, to C-2, General Commercial District, subject to certain conditions proffered by the petitioner. (The matter was tabled at the May 6, 2002 meeting of Council.)

9. INTRODUCTION AND CONSIDERATION OF ORDINANCES AND RESOLUTIONS: NONE.

10. MOTIONS AND MISCELLANEOUS BUSINESS:

- a. Inquiries and/or comments by the Mayor, Vice-Mayor and Members of City Council.
- b. Vacancies on various authorities, boards, commissions and committees appointed by Council.

11. CITY MANAGER COMMENTS:

12. HEARING OF CITIZENS UPON PUBLIC MATTERS:

CITY COUNCIL SETS THIS TIME AS A PRIORITY FOR CITIZENS TO BE HEARD. IT IS ALSO A TIME FOR INFORMAL DIALOGUE BETWEEN COUNCIL MEMBERS AND CITIZENS. MATTERS REQUIRING REFERRAL TO THE CITY MANAGER WILL BE REFERRED IMMEDIATELY FOR ANY NECESSARY AND APPROPRIATE RESPONSE, RECOMMENDATION OR REPORT TO COUNCIL.

THE MEETING WILL BE DECLARED IN RECESS TO BE RECONVENED AT 7:00 P.M., IN THE CITY COUNCIL CHAMBER, FOURTH FLOOR, NOEL C. TAYLOR MUNICIPAL BUILDING, 215 CHURCH AVENUE, S. W., CITY OF ROANOKE.



***ROANOKE CITY COUNCIL
REGULAR SESSION***

***MAY 20, 2002
7:00 P.M.***

CITY COUNCIL CHAMBER

AGENDA FOR THE COUNCIL

Call to Order -- Roll Call.

The Invocation will be delivered by Council Member William D. Bestpitch.

The Pledge of Allegiance to the Flag of the United States of America will be led by Mayor Smith.

Welcome. Mayor Smith.

NOTICE:

Tonight's meeting will be televised by RVT Channel 3 to be replayed on Thursday, May 23, 2002, at 7:00 p.m., and Saturday, May 25, 2002, at 4:00 p.m. Council meetings are now being offered with closed captioning for the hearing impaired.

A. PUBLIC HEARINGS:

- 1(a) Bids for lease of certain property in East Gate Park for construction, maintenance and operation of a golf facility for use by the general public.
- (b) Public hearing with regard to the lease of certain property in East Gate Park for construction, maintenance and operation of a golf facility for use by the general public, subject to certain terms and conditions. Darlene L. Burcham, City Manager.
2. Public hearing on the request of Cape Town, L.C., and Steven W. Morris that two tracts of land located on the southwest side of Roberts Road, S.W., identified as Official Tax Nos. 1290212 and 1290211, be rezoned from RS-3, Residential Single Family District, to C-1, Office District, subject to certain conditions proffered by the petitioners. Daniel F. Layman, Attorney.
3. Public hearing on the request of the City of Roanoke, Calvin W. and Mary C. Powers, and Theodore J. and Judy P. Sutton that a tract of land lying generally west of Courtland Avenue, N. W., north of Orange Avenue and south of Sycamore Avenue, comprising approximately 24.5 acres, more or less, and designated as Official Tax Nos. 3070301-3070310, inclusive; 3070313-3070316, inclusive; 2041816 and 2041817, currently zoned LM, Light Manufacturing District; and Official Tax Nos. 3070501, 3070318 and 3070319, currently zoned C-2, General Commercial District, be rezoned to C-3, Central Business District. Darlene L. Burcham, City Manager.
4. Public hearing on a proposal of the City of Roanoke to lease an 8.5 acre, more or less, parcel of land located on top of Mill Mountain, as described in Exhibit A to a Lease and Agreement dated January 1, 2002, to the Blue Ridge Zoological Society of Virginia, Inc., for a period of five years, ending December 31, 2006. Darlene L. Burcham, City Manager.

P. 114;
P. 130;
R. 142;
O. 144

P. 146;
O. 166

P. 168;
O. 180

P. 182;
O. 198

B. INTRODUCTION AND CONSIDERATION OF ORDINANCES AND RESOLUTIONS:

- a. Ordinance No. 35850 amending Section 32-217, Levied rate, Article IX, Admissions tax, Chapter 32, Taxation, Code of the City of Roanoke (1979), as amended, to increase the admissions tax on the stated admission charge to any place of amusement or entertainment from 5 per cent to 6.5 per cent, effective July 1, 2002. O. 199
- b. Ordinance No. 35851 amending certain fees and charges, establishing certain new fees and charges with regard to subdivision and zoning fees, and amending the Fee Compendium, effective July 1, 2002. O. 201

C. HEARING OF CITIZENS UPON PUBLIC MATTERS:

CITY COUNCIL SETS THIS TIME AS A PRIORITY FOR CITIZENS TO BE HEARD. IT IS ALSO A TIME FOR INFORMAL DIALOGUE BETWEEN COUNCIL MEMBERS AND CITIZENS. MATTERS REQUIRING REFERRAL TO THE CITY MANAGER WILL BE REFERRED IMMEDIATELY FOR RESPONSE, RECOMMENDATION OR REPORT TO COUNCIL.

CITY OF ROANOKE

CITY COUNCIL

215 Church Avenue, S.W., Room 456

Roanoke, Virginia 24011-1536

Telephone: (540) 853-2541

Fax: (540) 853-1145

RALPH K. SMITH

Mayor

Council Members:

William D. Bestpitch

William H. Carder

C. Nelson Harris

W. Alvin Hudson, Jr.

William White, Sr.

Linda F. Wyatt

May 20, 2002

The Honorable Mayor and Members of
the Roanoke City Council
Roanoke, Virginia

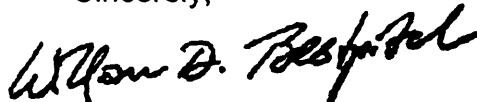
Dear Mayor Smith and Members of Council:

As one of Council's representatives to the War Memorial Committee, I would like to request the privilege of presenting two measures for Council's consideration at our 2:00 p.m. session on Monday, May 20.

The first is a resolution recognizing and commending the War Memorial Committee upon donation of \$5,000.00 to the National D-Day Memorial Foundation's fundraising campaign; and the second is a resolution in memory of a Roanoke native, Mr. Donald McArthur Young, who lost his life as a result of the September 11 attack on the Pentagon.

With kindest regards, I am

Sincerely,



William D. Bestpitch
Council Member

WDB:MFP:sm

WAX

IN THE COUNCIL OF THE CITY OF ROANOKE, VIRGINIA,

A RESOLUTION paying tribute to the Roanoke Valley War Memorial Committee for its donation to the National D-Day Memorial.

WHEREAS, the idea of a National D-Day Memorial was originated by a group of the Roanoke Valley; and

WHEREAS, the founding board of the National D-Day Memorial Foundation was constituted predominately of citizens of this valley who pursued, nourished, and nurtured the development of the Memorial through the years since its inception in 1988; and

WHEREAS, the D-Day Memorial was dedicated on June 6, 2001, to memorialize the valor, fidelity, and sacrifice of the Allied Forces on D-day, June 6, 1944; and

WHEREAS, the dedication ceremony was attended by the President of the United States, survivors of the D-Day landing at Normandy, other veterans, numerous dignitaries, and many citizens of this and several other countries; and

WHEREAS, the National D-Day Memorial is expected to continue to attract visitors to the Roanoke Valley and the Bedford area from across the country and around the world who recognize the value of Operation Overlord to freedom and democracy everywhere; and

WHEREAS, the National D-Day Memorial Foundation is seeking contributions to retire its substantial outstanding debt from construction of the Memorial; and

WHEREAS, the Roanoke Valley War Memorial Committee has maintained a special account containing the surplus from its creation and erection of the Roanoke Valley War Memorial at Lee Plaza in 1982; and

WHEREAS, the Committee has voted to donate \$5,000, or almost half of its surplus, in support of the National D-Day Memorial Foundation's fundraising campaign; and

WHEREAS, the Committee hopes that its donation will inspire others to keep faith with those who breached the line of Nazi domination in Europe and pointed the way to victory over the Axis powers, as well as with those responsible for building the Memorial to honor this event.

THEREFORE, BE IT RESOLVED by Council of the City of Roanoke that:

1. City Council hereby officially recognizes the significance of this gift from one of its standing committees and commends the Committee for its generosity; and

2. That other citizens, organizations, businesses, and governments are encouraged to duplicate the spirit of this donation so that this majestic and proud monument to one of the most heroic and meaningful events in history shall not be stained by failure to meet its just debts.

ATTEST:

City Clerk

WMA

IN THE COUNCIL OF THE CITY OF ROANOKE, VIRGINIA,

A RESOLUTION memorializing the late Donald McArthur Young, a longtime resident of Roanoke.

WHEREAS, the members of Council learned with sorrow of the passing of Mr. Donald McArthur Young, as a result of the September 11, 2001 attack on the Pentagon; and

WHEREAS, Mr. Young was a high school football star and graduate of William Fleming High School; and

WHEREAS, upon graduation from high school, Mr. Young received a scholarship to North Carolina A&T State University in Greensboro, N.C.; and

WHEREAS, after college, Mr. Young became a career officer in the United States Navy and served for 21 years; and

WHEREAS, a veteran of the Persian Gulf War, Mr. Young, was nominated for numerous medals, such as the Atlantic Fleet Sailor of the Year and the Service Warfare Award, and volunteered as the fitness coordinator for the Navy, training his fellow team members; and

WHEREAS, Mr. Young was one of 68 victims in the September 11, 2001 attack on the Pentagon; and

WHEREAS, at the time of his death, Mr. Young served as Chief of Naval Operations-Information System Technician at the Pentagon in Washington, D.C.; and

WHEREAS, as a proud member of the American military, Mr. Young was willing to give his life for his country and died while fulfilling the duties he loved.

THEREFORE, BE IT RESOLVED by the Council of the City of Roanoke as follows:

1. City Council adopts this resolution as a means of recording its deepest regret and sorrow at the passing of Donald McArthur Young, and extends to his family its sincerest condolences.
2. The City Clerk is directed to forward an attested copy of this resolution to Mr. Young's widow, Felicia Young, of Virginia Beach, Virginia.

ATTEST:

City Clerk

WMT

IN THE COUNCIL OF THE CITY OF ROANOKE, VIRGINIA,

A RESOLUTION expressing gratitude to John H. Parrott for his years of service to the Hotel Roanoke Conference Center Commission.

WHEREAS, the Hotel Roanoke Conference Center Commission was established by resolutions adopted by Virginia Polytechnic Institute & State University on November 18, 1991, and by the City of Roanoke, Virginia, on April 14, 1992, pursuant to Chapter 440 of the 1991 Acts of Assembly of the Commonwealth of Virginia, adopted March 20, 1991, to build and operate the Conference Center of Roanoke; and

WHEREAS, the City Council appointed John H. Parrott to the Commission on July 1, 1996; and

WHEREAS, Mr. Parrott was elected Chairman of the Commission on November 20, 1997, and continued to serve in that position until 2002, when his term on the Commission expired; and

WHEREAS, under Mr. Parrott's leadership as Chairman, the Commission discovered significant construction deficiencies in the Conference Center; and

WHEREAS, Mr. Parrott's lengthy and distinguished career as one of Western Virginia's leading construction experts proved invaluable to the Commission as it investigated the Conference Center's complicated geotechnical and structural problems; and

WHEREAS, Mr. Parrott, without any financial remuneration or incentive other than his commitment to the commonwealth, took countless hours away from his construction consulting firm to review and reform a highly complex remediation plan for the Conference Center designed by the

Commission's engineers and assist the Commission's lawyers in their multiparty litigation against those responsible for the building's defects; and

WHEREAS, Mr. Parrott's sage counsel contributed mightily to the Commission's resounding success in 2001, when its construction litigation climaxed in a large financial settlement and the Conference Center remediation project concluded ahead of schedule and under budget; and

WHEREAS, the Conference Center today stands as a better building in no small part because of the vigilance of the Commission's former chairman, John H. Parrott.

THEREFORE, BE IT RESOLVED by the Council of the City of Roanoke that Council adopts this means of recognizing and expressing its gratitude to John H. Parrott for his critical service during his tenure as Chairman of the Hotel Roanoke Conference Center Commission.

ATTEST:

City Clerk.

CITY OF ROANOKE

Proclamation

WHEREAS, *Emergency Medical Services is a vital public service; and*

WHEREAS, *the members of the emergency medical services teams are ready to provide lifesaving care to those in need 24 hours a day, seven days a week; and*

WHEREAS, *access to quality emergency care dramatically improves the survival and recovery rate of those who experience sudden illness or injury; and*

WHEREAS, *emergency medical services providers have traditionally served as the safety net of America's health care system; and*

WHEREAS, *it is appropriate to recognize the value and the accomplishments of emergency medical services providers by designating Emergency Medical Services Week; and*

WHEREAS, *Roanoke Fire-EMS is joined by other concerned citizens of Roanoke, as well as other emergency service providers and safety advocates, businesses, schools, service clubs and organizations in their safety efforts.*

NOW, THEREFORE, I, *Ralph K. Smith, Mayor of the City of Roanoke, Virginia, in recognition of the outstanding services performed by these individuals, do hereby proclaim the week of May 19 – 25, 2002, throughout this great All-America City, as*

EMERGENCY MEDICAL SERVICES WEEK.

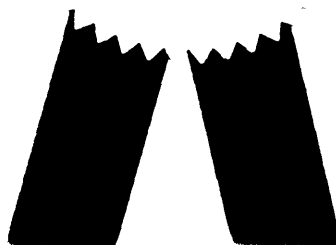
Given under our hands and the Seal of the City of Roanoke this twentieth day of May in the year two thousand and two.

ATTEST:



Mary F. Parker
City Clerk

Ralph K. Smith
Mayor





May 3, 2002

Honorable Ralph K. Smith, Mayor
Honorable William H. Carder, Vice Mayor
Honorable W. Alvin Hudson, Council Member
Honorable William D. Bestpitch, Council Member
Honorable William White, Sr., Council Member
Honorable C. Nelson Harris, Council Member
Honorable Linda F. Wyatt, Council Member

Dear Mayor Smith and Members of City Council:

Subject: Roanoke Valley Alleghany Regional Commission

Please accept this letter as my resignation from the Roanoke Valley Alleghany Regional Commission. I very much appreciated the opportunity to serve on this dynamic regional commission and have enjoyed working with Commission members throughout the region.

Sincerely,

Evelyn S. Lander, AICP, Director
Planning Building and Development

C: Darlene L. Burcham, City Manager
Wayne Strickland, Executive Director



Office of the City Manager

May 20, 2002

Honorable Ralph K. Smith, Mayor
 Honorable William H. Carder, Vice Mayor
 Honorable William D. Bestpitch, Council Member
 Honorable C. Nelson Harris, Council Member
 Honorable W. Alvin Hudson, Jr., Council Member
 Honorable William White, Sr., Council Member
 Honorable Linda F. Wyatt, Council Member

Dear Mayor Smith and Members of City Council:

Subject: Change Order No. 2
 Crystal Spring Water Treatment
 (Filtration) Plant

Mid Eastern Builders, Inc. was awarded a contract in the amount of \$4,477,000 at the October 1, 2001 meeting of City Council for building construction and equipment installation at the Crystal Spring Water Treatment (Filtration) Plant as defined in the contract documents prepared by Wiley & Wilson, Inc.

Change Order No. 1 was administratively approved in the amount of \$14,902 for a total contract amount of \$4,491,902. Change Order No. 2 provides for the relocation of the raw water pump manhole and strainer box (\$111,033). The proposed change order also includes the addition of a sink and cabinets in the control room (\$11,136), and credits for reduced quantities of driven piles (-\$13,953). The total value of Change Order No. 2 is \$108,216 with a contract time extension of two days. Our construction administration consultant, Construction Dynamics Group, Inc., recommends approval of this change order.

Summary of Changes:

Contract Amount	\$4,477,000
Change Order No. 1	14,902
Proposed Change Order No. 2	<u>108,216</u>
Total	<u>\$4,600,118</u>


Funding for Change Order No. 2 is available in account number 002-530-8397, Crystal Spring Water Treatment Plant Construction.

Honorable Mayor and Members of Council
May 20, 2002
Page 2

Recommended Action:

Authorize the City Manager to execute Change Order No. 2 in the amount of \$108,216 and two additional days of contract time with Mid Eastern Builders, Inc. for the above work.

Respectfully submitted,



Darlene L. Burcham
City Manager

DLB/LBC/bls

c: Mary F. Parker, City Clerk
William M. Hackworth, City Attorney
Jesse A. Hall, Director of Finance
Philip C. Schirmer, City Engineer

#CM02-00081

IN THE COUNCIL OF THE CITY OF ROANOKE, VIRGINIA,

AN ORDINANCE authorizing the City Manager's issuance of Change Order No. 2 to the City's contract with Mid Eastern Builders, Inc. for the relocation of the raw water pump manhole and strainer box, modifications to three restrooms for ADA compliance, and credits for reduced quantities of driver piles in connection with the Crystal Spring Water Treatment (Filtration) Plant Project; and providing for an emergency.

BE IT ORDAINED by the Council of the City of Roanoke that:

1. The City Manager is authorized to execute for and on behalf of the City, in a form approved by the City Attorney, Change Order No. 2 to the City's contract with Mid Eastern Builders, Inc. for the relocation of the raw water pump manhole and strainer box, modifications to three restrooms for ADA compliance, and credits for reduced quantities of driver piles in connection with the Crystal Spring Water Treatment (Filtration) Plant Project, all as more fully set forth in the letter to this Council dated May 20, 2002.
2. This Change Order will provide authorization for additions and reductions in the work with an increase in the amount of \$108,216.00 to the contract, all as set forth in the above letter.
3. In order to provide for the usual daily operation of the municipal government, an emergency is deemed to exist, and this ordinance shall be in full force and effect upon its passage.

ATTEST:

City Clerk.



May 20, 2002

Honorable Ralph K. Smith, Mayor
Honorable William H. Carder, Vice Mayor
Honorable William D. Bestpitch, Council Member
Honorable C. Nelson Harris, Council Member
Honorable W. Alvin Hudson, Jr., Council Member
Honorable William White, Sr., Council Member
Honorable Linda F. Wyatt, Council Member

Dear Mayor Smith and Members of City Council:

Subject: Reject Proposal on Turnkey
 Parts Operation
 RFP #01-09-16

Background:

The need to evaluate contracting for the operation of the Fleet Parts Warehouse was identified by the City's Fleet Management Division. Proposals were requested after due and proper advertisement. One (1) response from NAPA Auto Parts was received and evaluated.

Considerations:

A cost analysis of the NAPA Auto Parts proposal indicated that contracting the operation on the Fleet Warehouse would not result in any cost savings, but would result in an incremental cost of approximately \$32,300.00.

Contracting for the operation of the Fleet Management function is being considered, and management of the Parts Warehouse would be a part of the scope of services to ensure control. It is our intent to not foreclose any opportunities with respect to contracting for the operation of the Fleet Management function.

The Honorable Mayor and Members of Council
May 20, 2002
Page 2

Recommended Action:

Reject the proposal from NAPA Auto Parts for turnkey parts operation in Fleet Management Division.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Darlene L. Burcham". The signature is fluid and cursive, with the first name "Darlene" being more prominent than the last name "Burcham".

Darlene L. Burcham
City Manager

DLB:bdf

c: Mary F. Parker, City Clerk
William M. Hackworth, City Attorney
Jesse A. Hall, Director of Finance
Dick Bain, Acting Fleet Operations Administrator
Robert L. White, Manager, Purchasing

#CM02-00082

4FD

IN THE COUNCIL OF THE CITY OF ROANOKE, VIRGINIA

A RESOLUTION rejecting the proposal for Turnkey Parts Operation for the City's Fleet Division.

WHEREAS, the City received only one proposal for Turnkey Parts Operation, and the City desires to reject the proposal from NAPA Auto Parts.

BE IT RESOLVED by this Council of the City of Roanoke that:

1. Only one proposal was received for Turnkey Parts Operation, and a cost analysis of the NAPA Auto Parts proposal indicated that contracting the operation of the Fleet Warehouse would not result in any cost savings, but would result in an increased incremental cost of approximately \$32,300.00.
2. Because the only proposal received would not result in a cost savings to the City, the proposal of NAPA Auto Parts is REJECTED, and the City Clerk is directed to notify the offeror and to express the City's appreciation for such proposal.

ATTEST:

City Clerk



May 20, 2002

Honorable Ralph K. Smith, Mayor
Honorable William H. Carder, Vice Mayor
Honorable William D. Bestpitch, Council Member
Honorable C. Nelson Harris, Council Member
Honorable W. Alvin Hudson, Jr., Council Member
Honorable William White, Sr., Council Member
Honorable Linda F. Wyatt, Council Member

Dear Mayor Smith and Members of City Council:

Subject: Competitive Negotiation
for Other than Professional
Services

Background:

As part of its commitment to service excellence for all citizens, in the year 2000, the City of Roanoke began contracting with an outside vendor to conduct an annual citizen survey. The City wishes to continue this survey process and desires the opportunity to enter into a contractual agreement with a qualified firm or independent professional specializing in telephone survey services. The successful Offeror shall provide assistance to the City by conducting surveys to receive public input in order to improve City services and to help guide the use of City resources. It is the City's intent to award a one-year contract with the option to renew under the same terms and conditions for two additional years, subject to funding availability.

Considerations:

Although the sealed bid method of procurement would normally be used, it is not practicable or fiscally advantageous to the public in procuring the above service. The experience, qualifications, and references of individuals or firms that can provide the above services are of equal, if not greater, importance than the cost. Therefore, the process of competitive negotiation using the request for proposal has been identified as the best method for procurement of these services.

The Code of the City of Roanoke provides, as an alternate method of procurement to using the bid process, a process identified as "competitive negotiation". Prior approval by Council is necessary before the alternate method may be used. See City Code Section 23.1-4(e). This method will allow for negotiations with two (2) or more providers to determine the best qualified at the most competitive price or rate.

Recommended Action:

City Council authorize the use of competitive negotiation as the method to secure vendors to provide appropriate services as identified in this letter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Darlene L. Burcham", written in a cursive style.

Darlene L. Burcham
City Manager

DLB:rbf

c: Mary F. Parker, City Clerk
William M. Hackworth, City Attorney
Jesse A. Hall, Director of Finance
Barry L. Key, Director of Management and Budget
Robert L. White, Purchasing Manager

CM02-00084

IN THE COUNCIL OF THE CITY OF ROANOKE, VIRGINIA

A RESOLUTION designating the procurement method known as competitive negotiation, rather than the procurement method known as competitive sealed bidding, to be used for the procurement of telephone survey services to conduct an annual citizen survey; and documenting the basis for this determination.

WHEREAS, the City seeks to procure proposals from vendors to provide telephone survey services by conducting a citizen survey to receive public input in order to improve City services and to help guide the use of City resources.

WHEREAS, this Council finds that the use of the procurement method of competitive negotiation for the above mentioned services will allow for consideration of the factors of experience, qualifications, and references which are of equal, if not greater, importance than the cost.

WHEREAS, City Council is of the opinion that such services should be procured by competitive negotiation rather than competitive sealed bidding.

THEREFORE, BE IT RESOLVED by this Council of the City of Roanoke as follows:

1. Pursuant to Section 23.1-4(e), Code of the City of Roanoke, (1979), as amended, this Council finds that the procurement method known as competitive sealed bidding is not practicable and/or is not fiscally advantageous to the public for the reasons set forth above for the procurement of telephone survey services for the purpose of conducting an annual citizen survey.

2. City Council directs that the procurement method known as competitive negotiation shall be used for the procurement of telephone survey services, as more fully set forth in the City Manager's Letter to this Council dated May 20, 2002.

3. This Resolution documents the basis for City Council's determination.

ATTEST:

City Clerk



Office of the City Manager

May 20, 2002

Honorable Ralph K. Smith, Mayor
 Honorable William H. Carder, Vice Mayor
 Honorable W. Alvin Hudson, Council Member
 Honorable William D. Bestpitch, Council Member
 Honorable William White, Sr., Council Member
 Honorable C. Nelson Harris, Council Member
 Honorable Linda F. Wyatt, Council Member

Dear Mayor Smith and Members of City Council:

Subject: Street Closures for Outdoor
 Dining

Background:


At its meeting on April 1, 2002 Roanoke City Council adopted an ordinance to amend the conditions for outdoor dining on public property and within the public right-of-way. The regulations for the outdoor dining program make available the use of certain streets between 6:30 p.m. and 3:00 a.m. Those two (2) streets are Market Street, S.E. from Salem Avenue, S.E. to Church Avenue, S.E. (including the Market Square area south of Campbell Avenue, S.E.) as well as Wall Street, S.E. from Salem Avenue, S.E. to Campbell Avenue, S.E.

Closure of these streets to vehicular and pedestrian passage during certain hours of the day on a frequent basis for an extended period of time requires the authorization of City Council. In anticipation that some restaurateurs will soon apply for outdoor dining permits to include street areas, it would help to expedite the approval process if City Council approved an ordinance closing to vehicular and pedestrian use the identified streets during specified hours and under certain circumstances.

Recommended action:

City Council adopt an ordinance declaring that Market Street, S.E., from Salem Avenue, S.E. to Church Avenue, S.E. (including the Market Square area south of Campbell Avenue, S.E.) as well as Wall Street, S.E., from Salem Avenue, S.E. to Campbell Avenue, S.E. are closed to the public as a right-of-way for vehicular and pedestrian traffic from 6:30 p.m. to 3:00 a.m., if the street, or any portion thereof, is subject to an outdoor dining permit issued by the City Manager pursuant to Section 30-9.1 of the Code of the City of Roanoke (1979) as amended.

Respectfully submitted,


 Darlene L. Burcham
 City Manager

Honorable Mayor and Members of City Council
May 20, 2002
Page 2

c: Mary F. Parker, City Clerk
William M. Hackworth, City Attorney
Jesse A. Hall, Director of Finance
Robert K. Bengtson, P.E., Director of Public Works
Kenneth H. King, Jr., P.E., Manager of Streets & Traffic

#CM02-00085

ST
5/16/02

IN THE COUNCIL OF THE CITY OF ROANOKE, VIRGINIA,

AN ORDINANCE authorizing the temporary closure, as needed, by barricade of certain public rights-of-way for outdoor dining in the City of Roanoke, Virginia, as is more particularly described hereinafter; and dispensing with the second reading of this ordinance by title.

WHEREAS, the Council of the City of Roanoke adopted Ordinance No. 35792-040201, on April 2, 2002, to provide for an outdoor dining program to be implemented within public rights-of-way and on public property in the City of Roanoke, subject to certain terms and conditions;

WHEREAS, implementation of the outdoor dining program may require the temporary closure by barricade of portions of certain public rights-of-way;

WHEREAS, streets that may be needed for the outdoor dining program are Market Street, S.E., from Salem Avenue, S.E., to Church Avenue, S.E., and Wall Street, S.E., from Salem Avenue, S.E., to Campbell Avenue, S.E., and the Market Square area south of Campbell Avenue, S.E.; and

WHEREAS, closure of these streets and the Market Square area to vehicular and unrestricted pedestrian passage, as needed, during certain hours on a frequent basis for an extended period of time to implement the outdoor dining programs requires the authorization of City Council; and

WHEREAS, from all of the foregoing, the Council finds that no substantial inconvenience will result to any individual or to the public from temporary closure by barricade of said public rights-of-way to implement the outdoor dining program, and that such temporary closure will promote the safety and welfare of those dining outdoors in the public rights-of-way.

THEREFORE, BE IT ORDAINED by the Council of the City of Roanoke, Virginia, that

1. The public rights-of-way known as Market Street, S.E., from Salem Avenue, S.E., to Church Avenue, S.E., and Wall Street, S.E., from Salem Avenue, S.E., to Campbell Avenue, S.E., and the Market Square area south of Campbell Avenue, S.E., may be temporarily closed, as needed, by barricade between 6:30 p.m. and 3:00 a.m. of the next day, upon the issuance of an outdoor dining permit by the City Manager pursuant to section 30-9.1 of the City Code for outdoor dining within any portion of such public rights-of-way, provided that such closure shall be conditioned upon and in accordance with the terms and conditions of such outdoor dining permit.

2. Pursuant to the provisions of §12 of the City Charter, the second reading of this ordinance by title is hereby dispensed with.

ATTEST:

City Clerk.



May 20, 2002

Honorable Ralph K. Smith, Mayor
Honorable William H. Carder, Vice Mayor
Honorable William D. Bestpitch, Council Member
Honorable C. Nelson Harris, Council Member
Honorable W. Alvin Hudson, Jr., Council Member
Honorable William White, Sr., Council Member
Honorable Linda F. Wyatt, Council Member

Dear Mayor Smith and Members of City Council:

Subject: Muse Spring Well Site
Dedication

Background:

In January, 2001 the City finalized the drilling and testing of a well on the Muse Spring property, Tax Map #4360601, located at the intersection of Mount Pleasant Boulevard and Riverland Road, S.E. This well was a result of the groundwater development project initiated during the 1999 drought. The final phases of using the well as a water supply were put on hold pending completion of the Crystal Spring Treatment Plant and evaluation of the impact of I-73 construction passing near the well site.

On February 4, 2002 City Council declared that a water supply emergency existed and the use of this water supply was revisited. The Virginia Department of Health (Health Department) has given its approval to place the Muse Spring well into service through use of temporary equipment pending certification of final construction plans.

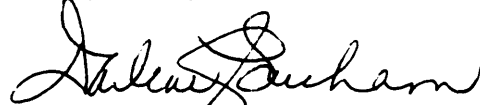
Considerations:

The Health Department requires that the City dedicate the portion of the parcel that the well site occupies. The dedication is to establish the area for water supply use only. An area 200' by 200' feet, centered on the well, needs to be dedicated for this purpose. The Health Department has agreed to permit construction of the facilities required to operate the well site, however it will not give final approval to use the water until the site is surveyed and platted. The Water Division has initiated this process as of April 26, 2002, and it should be completed in approximately three weeks from the date of this letter.

Recommended Action:

Council approve the dedication of the portion of real estate of the Muse Spring property that will be used as a well site to be used for a water supply system for the City and authorize the City Manager to execute a well dedication document for the well site and take such further actions and execute such other documents as may be necessary to obtain Health Department approval as set forth above.

Respectfully submitted,



Darlene L. Burcham
City Manager

DLB:je

c: Mary F. Parker, City Clerk
William M. Hackworth, City Attorney
Jesse A. Hall, Director of Finance

CM02-00089

P.T.

IN THE COUNCIL OF THE CITY OF ROANOKE, VIRGINIA

AN ORDINANCE authorizing the City Manager to execute a Well Dedication Agreement and any related and necessary documents providing for the dedication of a portion of certain City owned property located at the intersection of Mount Pleasant Boulevard and Riverland Road, S.E., containing an area approximately 200 by 200 feet and being a portion of Official Tax Map No. 4360601, upon certain terms and conditions; and providing for an emergency.

WHEREAS, the City would like to use water from a well located on the above described property, known as the Muse Spring property, to supplement the City's water supply, subject to approval from the Virginia Department of Health (Health Department); and

WHEREAS, the Health Department requires that the portion of the property occupied by the well site be dedicated for use only for water supply purposes and staff has recommended that such action be taken by Council.

THEREFORE, BE IT ORDAINED by the Council of the City of Roanoke as follows:

1. The City Manager and the City Clerk are hereby authorized to execute and attest, respectively, a Well Dedication Agreement as required by the Health Department and any related and necessary documents providing for the dedication of a portion of certain City owned property known as the Muse Spring property located at the intersection of Mount Pleasant Boulevard and Riverland Road, S.E., containing an area approximately 200 by 200 feet and being a portion of Official Tax Map No. 4360601, upon certain terms and conditions as required by the Health Department and as set forth in the City Manager's Letter to Council dated May 20, 2002.

2. The City Manager is further authorized to take such further action, to include the recording of documents, and execute such other documents, including any plats of survey, as may be necessary to obtain Health Department Approval for use of the water from the well located on the above property to supplement the City's water supply.

3. All documents necessary for this action will be in a form approved by the City Attorney

4. In order to provide for the usual daily operation of the municipal government, an emergency is deemed to exist, and this ordinance shall be in full force and effect upon its passage.

ATTEST:

City Clerk.



May 20, 2002

Honorable Ralph K. Smith, Mayor
Honorable William H. Carder, Vice Mayor
Honorable William D. Bestpitch, Council Member
Honorable C. Nelson Harris, Council Member
Honorable W. Alvin Hudson, Jr., Council Member
Honorable William White, Sr., Council Member
Honorable Linda F. Wyatt, Council Member

Dear Mayor Smith and Members of City Council:

Subject: Acceptance of Grant to
prepare Urban Forestry
Plan

Background:

In March, 2002, the Urban Forestry staff at the Department of Parks and Recreation applied for a \$15,000 grant from the Urban and Community Forestry program at the Virginia Department of Forestry. The grant will be used to prepare an Urban Forestry Plan.

On April 17, 2002, the City received a letter from the Virginia Department of Forestry stating that the \$15,000 grant will be awarded as soon as paperwork to activate the grant is provided by the City.

The project is needed in order to devise a systematic method of managing the City's urban forest to the maximum benefit of the community and environment. It also will allow citizens to participate in the planning process. The City's Urban Forester has presented information to City Council in the past indicating a decrease in tree canopy cover from 40% in 1973 to 35% in 1997. Even with the current tree planting budget (for trees maintained by the City on streets and in parks), there is still a net loss of approximately 50 trees each year.

Honorable Mayor and Members of Council
May 20, 2002
Page 2

Considerations:

The Urban and Community Forestry Grant is a federal grant, sponsored by the U.S. Forest Service and administered by the Virginia Department of Forestry. Funds are awarded on a reimbursement basis after verification of the 50% local match.

The required \$15,000 in City matching funds will include \$7,432 in FY 2002 temporary wages for an Urban Forestry Planner, \$4,400 in staff time provided by the Urban Forester and \$800 in staff time from cooperating departments, such as Public Works and Planning and Code Enforcement. The time spent by Task Force members on the project will count as the remainder of the match at the grantor's approved rate of \$15.39 per volunteer hour.

Major elements of the Urban Forestry Plan will include an assessment of trees along streets and in parks; review of tree management practices; prioritization of criteria for tree planting projects; urban forestry goals; recommendations (including education and incentives for better management of trees on private property); and an implementation strategy. Coordination is underway with other City departments (such as engineering, planning, and public works) in regard to several of the plan elements.

Recommended Action:

Accept the Urban and Community Forestry Grant in the amount of \$15,000 and authorize the City Manager and City Clerk to execute and attest, respectively, an agreement with the Virginia Department of Forestry and any other forms necessary to accept such grant, approved as to form by the City Attorney.

Appropriate \$15,000 in federal funding in accounts to be established in the Grant Fund by the Director of Finance and establish corresponding revenue estimates in the Grant Fund.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read 'Darlene L. Burdham', written in dark ink.

Darlene L. Burdham
City Manager

DLB:kaj

Honorable Mayor and Members of Council
May 20, 2002
Page 3

c: Rolanda A. Johnson, Assistant City Manager for Community Development
Mary F. Parker, City Clerk
William M. Hackworth, City Attorney
Jesse A. Hall, Director of Finance
Steven B. Buschor, Director of Parks and Recreation

CM02-00095

AH 5

IN THE COUNCIL OF THE CITY OF ROANOKE, VIRGINIA

AN ORDINANCE to amend and reordain certain sections of the 2001-2002 Grant Fund Appropriations, and providing for an emergency.

WHEREAS, for the usual daily operation of the Municipal Government of the City of Roanoke, an emergency is declared to exist.

THEREFORE, BE IT ORDAINED by the Council of the City of Roanoke that certain sections of the 2001-2002 Grant Fund Appropriations, be, and the same are hereby, amended and reordained to read as follows, in part:

Appropriations

Parks, Recreation and Cultural	\$ 48,000
Urban and Community Forestry Plan (1)	15,000

Revenues

Parks, Recreation and Cultural	\$ 48,000
Urban and Community Forestry Plan (2)	15,000

1) Urban and Community Forestry Grant	(035-620-4343-3004)	\$ 15,000
2) Federal Grant Receipts	(035-620-4343-4342)	15,000

BE IT FURTHER ORDAINED that, an emergency existing, this Ordinance shall be in effect from its passage.

ATTEST:

City Clerk.

IN THE COUNCIL OF THE CITY OF ROANOKE, VIRGINIA,

A RESOLUTION accepting the Urban and Community Forestry Grant from the Virginia Department of Forestry, and authorizing the execution of the necessary documents.

BE IT RESOLVED by the Council of the City of Roanoke that:

1. The City hereby accepts the Urban and Community Forestry Grant from the Virginia Department of Forestry in the amount of \$15,000.00.
2. The City Manager and the City Clerk are hereby authorized on behalf of the City to execute and attest, respectively, all necessary and appropriate agreements with the Virginia Department of Forestry, or any other party, for the City's acceptance of this grant, upon form approved by the City Attorney, as more particularly set forth in the City Manager's letter dated May 20, 2002, to this Council.

ATTEST:

City Clerk.

CITY OF ROANOKE
DEPARTMENT OF FINANCE
215 Church Avenue, S.W. Room 461
P.O. Box 1220
Roanoke, VA 24006-1220
Telephone: (540) 853-2824
Fax: (540) 853-2940

May 20, 2002

The Honorable Ralph K. Smith, Mayor
The Honorable William H. Carder, Vice Mayor
The Honorable William D. Bestpitch, Council Member
The Honorable C. Nelson Harris, Council Member
The Honorable W. Alvin Hudson, Jr., Council Member
The Honorable William White, Sr., Council Member
The Honorable Linda F. Wyatt, Council Member

Subject: Restatement and Amendment of the City of Roanoke
Pension Plan ("The Plan")

Dear Mayor and Members of Council:

Background:

Internal Revenue Service Regulations (IRS) require that all qualified plans be amended to include revisions made to the Internal Revenue Code (IRC) over the past several years. Amended plans must be submitted for an updated IRS Determination Letter by June 30, 2002. The IRS Determination Letter provides a statement that the plan has been reviewed by the IRS and determined to be in compliance with all applicable IRC provisions governing qualified retirement plans.

The Plan has evolved over the years to provide for the administration of three retirement systems: the original police and fire system; the Employees' Retirement System (ERS); and, the Employees' Supplemental Retirement System (ESRS), which amended and restated the ERS in 1984.

Numerous amendments and additions have been made to Chapter 22.1 of the Code to incorporate various plan revisions through the years. The required IRS amendment has provided an opportunity to restate the Plan to improve its organization, as well as to increase both its ease of understanding and administration.

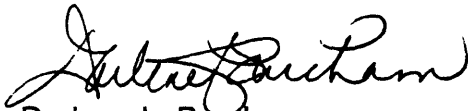
Considerations:

As outlined in the City Council briefing of May 6, 2002, the restated Chapter 22.2 addresses issues relative to the Plan's evolution into a multiple employer plan encompassing three retirement systems. It also provides significant administrative clarification and flexibility, is in compliance with all required IRS regulations, and includes no changes in benefits as existed prior to the Plan's amendment and restatement. The required IRS Determination Letter filing deadline is June 30, 2002:

Recommended Action:

We recommend City Council adopt the accompanying ordinance repealing Chapter 22.1, Pensions and Retirement and enacting new Chapter 22.2, Pensions and Retirement, such new chapter recodifying the City's pension systems. We would be pleased to answer any questions City Council may have.

Respectfully submitted,



Darlene L. Burcham
City Manager



Jesse A. Hall
Director of Finance

Attachment

c: William Hackworth, City Attorney
Mary Parker, City Clerk

IN THE COUNCIL OF THE CITY OF ROANOKE, VIRGINIA,

AN ORDINANCE amending the Code of the City of Roanoke (1979), as amended, by repealing Chapter 22.1, Pensions and Retirement, consisting of §§22.1-1 through 22.1-82, and enacting new Chapter 22.2, Pensions and Retirement, consisting of §§22.2-1 through §§22.2-75, such new Chapter consolidating, reorganizing, and recodifying pension systems of the City, specifically, Police and Fire System, the Employees' Retirement System and the Employees' Supplemental Retirement System; providing for an effective date; and dispensing with the second reading of this ordinance by title.

BE IT ORDAINED by the Council of the City of Roanoke as follows:

1. The Code of the City of Roanoke (1979), as amended, is amended and reordained by the addition of a new Chapter 22.2. Pensions and Retirement, consisting of §§22.2-1 through 22.2-75, to read and provide as follows:

Chapter 22.2 PENSIONS AND RETIREMENT

ARTICLE I. GENERAL

Sec. 22.2-1. Preamble.

On August 30, 1926, the City of Roanoke established its first retirement system covering employees of the fire and police departments (fire and police system). Effective July 1, 1946, another pension plan, the employees' retirement system (ERS), was established to cover employees of the fire and police departments, as well as other employees of the city. The fire and police system covered only those fire and police employees of the city whose date of hire was on or before December 31, 1945. The fire and police system shall exist until such time as all payments promised to its covered

retirees and beneficiaries have been made, and no other liabilities for payment exist. Those retirees and beneficiaries of the fire and police system shall remain under the terms and conditions of the fire and police system.

The employees' retirement system (ERS) has been amended from time to time in order to increase retirement benefits, eliminate mandatory employee contributions, and voluntarily comply with certain provisions of the Employee Retirement Income Security Act of 1974.

By Ordinance No. 27061, adopted on June 18, 1984, City Council amended and restated the ERS effective July 1, 1984. The ERS was replaced for certain active Members by the employees' supplemental retirement system (ESRS) which covers employees of Participating Employers (1) who voluntarily elected to cease membership in the ERS and begin participation in the ESRS, and (2) new employees of Participating Employers whose date of hire or rehire is on or after July 1, 1984. ESRS did not affect the rights of any current beneficiaries as of June 30, 1984.

The fire and police system, ERS and ESRS shall share one (1) common trust fund from which all benefits shall be paid without distinction as to the source of the funds and which shall be administered by one (1) board of trustees.

By Ordinance No. _____, City Council amends and restates the Pensions and Retirement Chapter generally effective June 1, 2002. Certain provisions have retroactive effective dates as indicated in the text in order to comply with federal tax laws. The purpose of the amendment and restatement is to assure compliance with federal tax laws and to streamline the administration of the benefits provided under this Chapter. Nothing in this amendment and restatement of the Pensions and Retirement Chapter shall decrease Creditable Service or Earnable Compensation under the terms of the Chapter as it existed prior to its amendment and restatement.

The fire and police system, ERS and ESRS shall hereafter collectively be referred to as the City of Roanoke Pension Plan (City Plan).

Sec. 22.2-2. Definitions.

The following words and phrases, as used herein, shall have the following meanings, unless a different meaning is plainly required by the context. Words importing male gender shall be construed to include female, and singular words shall be deemed to include plural and plural words shall be deemed to include singular, whenever appropriate. As used in this Chapter:

Accrued Benefit shall mean the amount of a Member's monthly Pension computed at any time according to the terms and conditions which are applicable to the Member, the equivalent value of which is payable for the lifetime of a Member beginning at his Normal Retirement Age. Accrued Benefits shall be based on the formula in section 22.2-43 for ESRS Members and in section 22.2-47 for ERS Members. Creditable

Service and Average Final Compensation as of the effective date of the calculation shall be used.

Actuarial equivalent shall generally be computed based on five percent (5%) interest and the UP84 unisex mortality table except where different factors are specifically set forth in this Chapter, or are adopted by the Board and set forth in the Administrative Procedures Manual maintained by the Board.

Beneficiary shall mean any person entitled to benefits under this Chapter.

Board or Board of Trustees shall mean the Board of Trustees provided for in Article II of this Chapter.

City shall mean the City of Roanoke, Virginia.

City Council shall mean the Council of the City of Roanoke.

City of Roanoke Pension Plan or City Plan is a collective term referring to three (3) pension systems, as follows:

- (1) The police and fire department pension plan as in effect on July 1, 1946, including any subsequent amendments;
- (2) The employees' retirement system (ERS) as in effect on June 30, 1984, including any subsequent amendments; and,
- (3) The employees' supplemental retirement system (ESRS) as in effect on July 1, 1984, including any subsequent amendments.

Creditable service shall mean service as described in Article VI of this Chapter.

Disability Retirement shall mean a retirement that is based upon a disability and not upon a Member's age and service.

Earnable Compensation shall mean all usual and regular compensation from a Participating Employer plus salary supplements and the Participating Employer's contribution to the deferred compensation plan established under Section 457 of the Internal Revenue Code of 1986, as amended, excluding overtime pay, imputed income under Section 79 of the Internal Revenue Code of 1986, as amended, and any lump sum payment made upon separation from service for unused paid time off or for unused extended illness leave pursuant to regulations promulgated by the city manager, in the case of a City Employee (or by the governing body of any other Participating Employer in the case of an Employee of such other Participating Employer), in whatever manner paid. In cases where compensation is not all paid in money, the Board shall fix the value of that part of the compensation not paid in money. Earnable Compensation shall include compensation subject to a salary reduction or deferred compensation

agreement between an Employee and the Participating Employer pursuant to Section 125, 132(f)(4) of the Code (for plan years and limitation years beginning on or after January 1, 2001), 402(g)(3) or 457(b) of the Internal Revenue Code (and elective deferrals or contributions under any other sections of the Internal Revenue Code covered by Section 415(c)(3)(D) of the Internal Revenue Code), which compensation is not actually or constructively received by the Employee.

Employee shall mean any person employed in any capacity by a Participating Employer.

Eligible Employee shall mean

- (1) Any officer or employee of the City, the Roanoke Regional Airport Commission, or the Roanoke Valley Detention Commission; except a part-time officer or Employee (one who is customarily employed less than twenty (20) hours per week or not more than five (5) months in a calendar year), and
- (2) Police and fire personnel employed on or after the first day of January, 1946;
- (3) The city manager, city attorney, director of finance, municipal auditor, director of real estate valuation and the city clerk (the "council appointed officers");
- (4) Every officer and other person employed by the City School Board who is not eligible for membership in the Virginia Retirement System or successor plan except a part-time officer or Employee (one who is customarily employed less than twenty (20) hours per week or not more than five (5) months in a calendar year), or, an Employee who is employed solely as a bus driver;
- (5) Every Employee of the Roanoke Valley Resource Authority who became an Employee of such Authority upon its creation pursuant to the terms of the Distribution and Indemnification Agreement dated October 23, 1991. No additional Employees of the Roanoke Valley Resource Authority shall be eligible to participate in the City Plan;
- (6) Every Employee of the Roanoke Valley Detention Commission who became an Eligible Employee pursuant to the terms of the Agreement dated October 7, 1998; whether or not such Employees meet the criteria set forth in clause (1) of this Section; and,
- (7) Constitutional officers and employees of constitutional officers who by contract with the City are included in the City Plan.

The sheriff of the City and all deputies and Employees in said office, and their successors and all subsequent Employees in such office are not Eligible Employees.

Members of City Council shall be deemed "Eligible Employees".

Employees of the Virginia Supreme Court and of the Juvenile District Court who, in 1982, made the irrevocable election to remain in the City Plan are Eligible Employees. Such an Employee shall remain subject to the irrevocable election for so long as he or she remains employed by the court system, without a separation from employment.

Employees of the City as of July 1, 2000, whose positions are funded by grants shall be deemed "Eligible Employees" if they have elected to become a Member by making an irrevocable election to do so in the manner set forth by the Board of Trustees.

Employees hired by the City after July 1, 2000, whose positions are funded by grants shall be deemed "Eligible Employees".

In all cases of doubt, the Board shall determine who is an "Eligible Employee" within the meaning of this Chapter, subject however, to review by City Council.

Medical Examiner shall mean those persons designated pursuant to section 22.2-18.

Member shall mean any person included in the membership of the City Plan as provided in Article V.

Participating Employer shall mean the City and any employer who with the consent of the City Council upon recommendation by the Board shall adopt the City Plan; provided that the employer is a governmental employer as defined in Section 414(d) of the Internal Revenue Code of 1986 as amended. The current Participating Employers are: the City, City of Roanoke School Board; Roanoke Regional Airport Commission; Roanoke Valley Resource Authority; and Roanoke Valley Detention Commission. The Board shall keep a record of the dates participation began.

Pension shall mean annual payments for life, payable in monthly installments continuing up to the last payment which shall be made for the month in which the date of death occurs, except as otherwise provided in this Chapter.

Service shall mean service as an Employee of a Participating Employer.

Service Retirement shall mean a normal or early retirement that is based upon a Member's age and service alone and not upon disability or death.

Sec. 22.2-3. Falsifying statements, reports or records.

Whoever, with intent to deceive, shall make any statements or reports required under this Chapter which are untrue, or shall falsify or permit to be falsified any record or records of the plan shall be guilty of a Class I misdemeanor.

Sec. 22.2-4. Rights, benefits and plan money not subject to assignment, execution, garnishment, etc.

The right of a person to a pension, any optional benefit or death benefit, any other right accrued or accruing to any person under the provisions of this Chapter and the money in the various accounts created by this Chapter shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency law or any other process of law whatsoever, and shall be unassignable. The provisions of this section prohibiting the assignment or alienation of benefits shall not apply to a domestic relations order which is determined by the secretary-treasurer of the City Plan or his designee to be an approved domestic relations order as defined by section 414(p) of the Internal Revenue Code, as applicable to governmental plans. The Board shall establish procedures for review, approval and administration of such orders.

Sec. 22.2-5. City employees who are subsequently reclassified as employees of the Commonwealth of Virginia.

Should any Member of the City Plan be voluntarily or involuntarily reclassified as an employee of the Commonwealth of Virginia such individual may elect to remain as a Member of the City Plan or elect to participate in another retirement plan if such option is available. Should the Member join any other retirement plan he will be treated as having terminated active membership in the City Plan and be entitled to receive only his vested benefits earned prior to termination of active membership.

Sec. 22.2-6. Right to accrued benefits upon termination of City Plan.

In the event of termination of the City Plan, the rights of each Member to benefits accrued to such date shall be nonforfeitable to the extent then funded. If all Accrued Benefits are not funded they shall be paid in the following order:

- (1) Present value of benefits to those currently receiving or eligible to receive benefits;
- (2) All others.

Sec. 22.2-7. Amendments to chapter and effect on Participating Employers.

(a) The City Council shall have the continuing right and power to amend or supplement this Chapter at any time, which right and power is hereby expressly reserved, but no amendment shall be adopted which will reduce the then Accrued Benefits of Members or Beneficiaries below the extent they are then covered by City Plan assets.

(b) Such amendments shall apply to all Employees of Participating Employers unless City Council specifically provides that such amendments may be rejected by Participating Employers.

ARTICLE II. ADMINISTRATION

Sec. 22.2-8. Board of Trustees generally.

(a) The general administration and the responsibility for the proper operation of the City Plan and for making effective the provisions of this chapter are hereby vested in the Board of Trustees. Each Board member shall discharge his duties with the care, skill, prudence, and diligence of a prudent man acting in like capacity and familiar with such matters.

(b) The Board shall be appointed by City Council and consist of nine (9) trustees as follows:

- (1) The mayor, ex officio.
- (2) The city manager, or his designee, ex officio.
- (3) The director of finance, ex officio.

(4) Two (2) trustees, each of whom shall be a Member of the City Plan and an Employee of a Participating Employer (but only one of the two shall be an Employee of a Participating Employer other than the City), but not a member of any of the departments specified in paragraph (5) of this subsection. A Participating Employer representative shall be appointed as of the next Board vacancy occurring after the effective date of the Plan restatement. Each successor shall be appointed for a four-year term.

(5) One trustee, who shall be a Member of the City Plan and either of the City's police or the City's fire department. Successors shall each be appointed for a two-year term. Successors shall be appointed from the alternate department not represented by the incumbent trustee.

(6) One trustee who is a resident of the City and a retired Member of the City Plan. Successors shall be appointed for two-year terms.

(7) Two (2) trustees who are residents of the City but not Members of the City Plan. Such trustees shall have demonstrated experience in either investment of institutional funds or pension administration. Such trustees shall serve staggered four-year terms.

(c) If a vacancy occurs in the office of a trustee, the vacancy shall be filled for the unexpired term in the same manner as the office was previously filled.

(d) The trustees, as such, shall serve without compensation.

(e) Each trustee shall, within ten (10) days after his appointment, take the oath prescribed by section 59 of the City charter.

(f) Each trustee shall be entitled to one (1) vote on the board. Five (5) concurring votes shall be necessary for a decision by the trustees at any meeting of the Board, and five (5) trustees shall constitute a quorum of the Board.

Sec. 22.2-9. Application of Conflict of Interest Act.

The provisions of the State and Local Government Conflict of Interest Act (VA. Code Section 2.2-3100 et seq.) shall apply to members of the Board.

Sec. 22.2-10. Election and appointment of officers of board; employment of services.

The Board shall elect from its membership a chair and a vice-chair. The Board may employ such actuarial, medical and other services as shall be required.

Sec. 22.2-11. Rules and regulations of Board.

Subject to the limitations of this Chapter, the Board shall, from time to time, establish rules and regulations for the administration of the City Plan and for the transaction of its business.

Sec. 22.2-12. Board's records and reports.

(a) The Board shall keep in convenient form such data as shall be necessary for actuarial valuation of the City Plan and for checking the experience of each system.

(b) The Board shall keep a record of all its proceedings, which shall be open to public inspection. It shall submit to the City Council, annually, a report showing the fiscal transactions of the City Plan for the preceding year, the amount of the accumulated cash and securities of the City Plan, and the financial report indicating the financial condition of the City Plan. Such report shall be made in the form and contain the information required by the current financial accounting standards applicable to public pension funds.

Sec. 22.2-13. Board's legal advisor.

The city attorney shall be the legal advisor of the Board.

Sec. 22.2-14. Secretary-treasurer; duties.

The director of finance shall be the secretary-treasurer of the Board. It shall be the duty of the secretary-treasurer to submit to the Board records deemed necessary to administer properly the City Plan.

Sec. 22.2-15. Correction of errors in benefit payments.

Should any change or error in the records of the City Plan result in any Member or Beneficiary receiving more or less than he would have been entitled to receive had the records been correct, the Board shall have the power to correct such error, and as far as practicable, to adjust the payments in such a manner that the Actuarial Equivalent of the benefit to which such Member or Beneficiary was correctly entitled shall be paid.

Sec. 22.2-16. Written application for retirement benefits.

In order to receive payment for any benefit which becomes payable from the City Plan, a Member or his Beneficiary shall complete the application and other forms prescribed by the secretary-treasurer of the City Plan. The Board shall have the authority to establish reasonable procedures governing the application for any benefits payable under the City Plan. Such procedures shall be set forth in the Administrative Procedures Manual maintained by the Board.

Sec. 22.2-17. Requirement to use employee's social security number.

A Member shall be required to disclose his social security account number as a condition of membership. The Board and secretary-treasurer shall be authorized to use such number for the purpose of Member identification.

Sec. 22.2-18. Designation and duties of Medical Examiners.

The secretary-treasurer of the City Plan shall designate as Medical Examiners licensed medical doctors or other health care professionals who are not eligible to participate in the City Plan. A Medical Examiner shall arrange for and conduct all medical examinations required to determine whether a Member is disabled, shall review medical records of the Member's personal physicians, shall review all essential statements and certificates by or on behalf of a Member in connection with application for Disability Retirement and shall report in writing to the Board his conclusions and recommendations upon all the matters referred to him.

Sec. 22.2-19. Designation and duties of actuary; certification of contribution rates; adoption of tables; etc.

(a) The Board shall designate an actuary or actuarial consulting firm who shall be the technical advisor of the Board on matters regarding the operation of the City Plan and who shall perform such other duties as are required. Such actuary or actuarial firm must have at least one (1) actuary who is a Fellow of the Society of Actuaries.

(b) The Board shall certify, from time to time, the rates of contribution payable under the provisions of this Chapter, and shall adopt for the systems, from time to time, such mortality, service and other actuarial tables as shall be deemed necessary; and on the basis of such tables, the actuary shall make annually an actuarial valuation of the

assets and liabilities of the systems. At least once in each five-year period, the Board shall cause an actuarial investigation to be made into the mortality, service and compensation experience of the Members and Beneficiaries of the systems. Such investigation shall be used as a basis for revisions to existing actuarial tables or the adoption of additional actuarial tables to be used to value the assets and liabilities of the systems.

ARTICLE III. TRUST FUND AND INVESTMENTS

Sec. 22.2-20. Accumulated assets.

The Board may invest the assets of any system or program it administers on a pooled or consolidated basis.

Sec. 22.2-21. Investment of assets; standard of care.

(a) The members of the Board shall be trustees of all the assets of the City Plan and shall have the full power and authority to invest and reinvest such assets, and to change such investments and reinvestments from time to time as authorized by law.

(b) Pursuant to the standards set forth in Section 803 of Title 51.1 of the Virginia Code, the Board shall discharge its duties with respect to the City Plan solely in the interest of the Members and Beneficiaries thereof and shall invest the assets of the City Plan with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and like aims. The Board shall also diversify such investments so as to minimize large losses unless under the circumstances it is clearly prudent not to do so.

Sec. 22.2-22. Exemption from Public Procurement Act.

The selection of services related to the management, purchase, or sale of authorized investments, including but not limited to actuarial services shall be governed by the standard of care in section 22.2.-21 and shall not be subject to the provisions of the Virginia Public Procurement Act.

Sec. 22.2-23. [Reserved]

Sec. 22.2-24. Custodian of assets; payments from funds.

(a) The Board shall designate a bank or trust company to be the custodian of the assets of the City Plan.

(b) When the Board shall have designated a bank or trust company to be custodian of certain or all of the assets of the City Plan, the Board may, by resolution adopted by

the Board, authorize such bank or trust company to hold all or any of the stock or registered securities of the City Plan entrusted to the custody of such bank or trust company in the name of a nominee of such bank or trust company as provided in the first paragraph of section 6.1-31 of the Code of Virginia, (1950), as amended, and the resolution of the board providing such authorization may further designate the nominee of such bank in whose name such stock and securities may be so held by the bank.

Sec. 22.2-25. Limitation on use of assets.

No member or employee of the Board shall have any direct or indirect interest in the gains or profits of any investment made by the Board, nor as a member of the Board receive any pay or compensation for his service. No member or employee of the Board shall, directly or indirectly, for himself or as an agent, in any manner use the assets of the City Plan, except to make such current and necessary payments as are authorized by the Board.

Sec. 22.2-26. Diversion of City Plan assets.

Upon no circumstances at any time prior to the satisfaction of all liabilities with respect to Members and their Beneficiaries under the trust shall any part of the trust corpus or income of the City Plan be used for or diverted to any purpose other than for the exclusive benefits of the Members and their Beneficiaries and for the reasonable administrative expenses of the City Plan.

ARTICLE IV. CONTRIBUTIONS

Sec. 22.2-27. Employer contributions.

(a) No contribution shall be deducted after May 31, 1973, from the compensation of Members, and the contributions payable by the Participating Employers shall be determined as provided in this section.

(b) The contributions to the City Plan made each year by the Participating Employers shall consist of a certain percentage of the Earnable Compensation of each Member to be known as the "normal contribution" and the "accrued liability contribution".

(c) The normal contribution for each Participating Employer shall be determined after each actuarial valuation and shall be based on the normal cost determined under the actuarial cost method used to complete the valuation. The actuarial cost method shall be any generally accepted actuarial cost method adopted by the Board for the purposes of completing the valuation.

(d) The accrued liability contribution of each Participating Employer shall be determined after each actuarial valuation and shall be based on the accrued liability determined under the actuarial cost method used to complete the valuation. The

unfunded or overfunded accrued liability, and any changes in the unfunded or overfunded accrued liability due to plan amendments, assumption changes, or experience gains or losses, shall be amortized as a level percent of pay over a period not to exceed thirty (30) years in accordance with acceptable GASB standards.

(e) The total amount payable by each Participating Employer in each year shall be sufficient, when combined with the assets of the system, to provide the benefits payable to Members and Beneficiaries then current.

(f) For valuation purposes the value of the assets must reflect current market value as of June 30 of each year, however, unrealized gains and losses or appreciation/depreciation may be phased in over a period of time at the Board's discretion.

(g) The actuary shall show separately the cost for each of the systems and, if requested by the Board, shall separate the cost of the deputized police officers and firefighters from all other Employees within each system, and , if requested by the Board, shall show separately the cost for each Participating Employer.

(h) All reasonable administrative expenses shall be paid from the trust.

(i) On or before March 1 of each calendar year, the Board shall file with the city manager and the governing body of each additional Participating Employer its certification of the amount of appropriations necessary to pay the required contribution as certified by the City Plan's actuary and such amount shall be included in the Participating Employer's budget in accordance with budget procedure.

ARTICLE V. MEMBERSHIP

Sec. 22.2-28. Membership generally.

(a) Any Eligible Employee shall become a Member of the of the City Plan.

(b) A Member of ERS on June 30, 1984 and who has not elected during election periods provided at various times between June 30, 1984 and July 1, 2000 to transfer to ESRS may continue as an ERS Member. No other person is eligible to become an ERS Member.

(c) Members or Beneficiaries of the police and fire department pension plan shall continue as part of that system, and shall not be eligible to transfer to the ESRS.

(d) On and after July 1, 1986, members of City Council shall be Members of ESRS. City Council members shall be accorded creditable service for all service as a member of City Council, whether continuous or not, including service prior to July 1, 1986.

(e) A Member of the City Plan may earn a benefit from only one (1) system.

Sec. 22.2-29. Election of benefit under ERS or ESRS for Members of ESRS having forty-two (42) or more years of creditable service.

Any Member of the ERS on June 30, 1984, who subsequently elected to transfer to ESRS and who thereafter attains forty-two (42) or more years of Creditable Service shall have his Accrued Benefit at the time of retirement calculated pursuant to the terms of ERS and ESRS, and such Member shall elect to be paid his Accrued Benefit under either ERS or ESRS prior to the commencement of payment of any benefits under the City Plan.

Sec. 22.2-30. Employees of constitutional offices and judges of courts of record not to receive benefits while being compensated by city for services rendered.

Notwithstanding any provision contained in this Article, no assistant, deputy or employee in any constitutional office and no employee of any judge of a court of record shall receive any benefit under this Chapter during any period of time in which such person may also receive from the City any compensation for services rendered as an elected officer, or any judge of a court of record after being retired pursuant to this Chapter.

Sec. 22.2-31. Restoration of beneficiaries to membership.

(a) Should a disability Beneficiary under Normal Retirement Age be restored to or be in Service at a compensation equal to or greater than his Average Final Compensation at retirement (adjusted by any cost of living adjustments granted since his last day of Service), or should any other Beneficiary be restored to Service prior to his Normal Retirement Age, his Pension shall cease and he shall become a Member of ESRS. Anything in this Chapter to the contrary notwithstanding, any Prior Service Certificate on the basis of which his Creditable Service was computed at the time of his retirement shall be restored to full force and effect and he shall be credited with all Creditable Service as a Member standing to his credit at the time of his retirement; provided, however, that his Pension upon subsequent retirement shall be no less than the sum of his previous Pension plus the amount computed on the basis of his Creditable Service and Earnable Compensation for the period after his restoration.

(b) Should any Beneficiary be restored to service on or after his Normal Retirement Age, the Pension shall be discontinued during the period of restoration, and he shall become a Member of the ESRS but in the event of his death during such period any payment under an optional benefit, if one (1) has been elected and has become effective, shall commence. Such a Member shall be considered a new Member with respect to service rendered subsequent to his restoration; except, that his Normal Retirement Age shall be the same as before restoration.

(c) If a former employee who is entitled to a deferred early service retirement allowance or a deferred vested allowance returns to service as an Eligible Employee of a Participating Employer before such allowance has become payable, he shall become a Member of the ESRS upon his return, and his retirement allowance payable on subsequent retirement shall be computed in accordance with the provisions of this Article in effect at such time on the basis of service standing to his credit at the time of his termination and service credited to him after his return.

(d) Any Member who is reemployed by a Participating Employer shall not have his Pension reduced below the level he was receiving or was eligible to receive prior to reemployment. This requirement applies both to the amount of Pension and eligibility for receiving payment.

(e) Should any Beneficiary receiving a pension be elected a member of City Council, such beneficiary may make an irrevocable election to:

(1) Discontinue receiving such Pension pursuant to the provisions of section 22.2-31(b) above, and accrue additional Creditable Service for serving on City Council; or

(2) Continue to receive a Pension, but forego the accrual of additional Creditable Service for serving on City Council.

ARTICLE VI. CREDITABLE SERVICE

DIVISION I - General

Sec. 22.2-32. Definitions.

Creditable Service means Membership Service plus Prior Service.

Membership Service shall mean service as a Member for which credit is allowable as provided in sections 22.2-37 and 22.2-40 and service which is otherwise expressly credited as Membership Service pursuant to sections 22.2-41, 22.2-33, 22.2-38 and 22.2-39.

Prior Service shall mean service rendered prior to becoming a Member for which credit is allowable as provided in sections 22.2-35, 22.2-74, and 22.2-41.

Prior Service Certificate shall mean a certificate issued by the Board of Trustees granting Prior Service.

Sec. 22.2-33. Service Credit during leaves of absence.

(a) No service credit shall be allowed for any period of thirty (30) or more days during which an employee was absent without pay; provided, however, any period of leave under the Family and Medical Leave Act of 1993 shall be treated as Membership Service for purposes of vesting and eligibility to participate (but not for the accrual of additional benefits).

(b) Periods for which an Eligible Employee is receiving workers' compensation shall also be treated as Membership Service for purposes of vesting and eligibility (but not for the accrual of additional benefits). Such workers' compensation related periods shall be credited upon the eligible employee's return to service.

(c) For a Member who has unused extended illness leave pursuant to section 2-55 of the City of Roanoke Code; or pursuant to the administrative process set by the Roanoke Valley Regional Airport Commission, seventy-five (75) percent of such Member's unused extended illness leave balance upon the date of retirement shall be converted to Creditable Service not to exceed one (1) year of Creditable Service; provided no Member shall use conversion of extended illness leave to meet vesting requirements of ESRS or ERS; no retirement allowance for any Member converting extended illness to Creditable Service shall exceed sixty-three percent (63%) of Average Final Compensation; and, such Member must begin receiving a retirement allowance immediately upon termination from employment. The Service Credit described in this section shall not be granted to Members who are Employees of the City School Board or the Roanoke Valley Resource Authority.

Sec. 22.2-34. [Reserved]

Sec. 22.2-35. Restoration of prior Creditable Service.

If a Member is hired by a Participating Employer, prior Creditable Service (if any) will be reinstated upon application therefor when the following conditions are met:

(1) The Member, other than a member of City Council, shall work one (1) continuous year after returning as an Eligible Employee before qualifying for prior Creditable Service; except when such person dies or becomes disabled after returning to service with a Participating Employer, in which case he shall become entitled to credit for prior Creditable Service as of the date of such death or disability without having to meet the requirement of one (1) year of continuous service.

(2) If the Member received a lump sum distribution for the full value of his pension previously earned, the lump sum is paid back with interest, at the rate of five (5) percent per annum compounded, within ninety (90) days after reemployment.

Sec. 22.2-36. Service Generally.

Except as provided in section 22.2-28, a Member shall be entitled to Creditable Service, for purposes of calculating retirement benefits, for all time such Member was an Eligible Employee, as defined in section 22.2-2, whether such service was continuous or not and regardless of breaks or interruptions in such service with any Participating Employer. In order to qualify for any Creditable Service, such Member shall not be required to make any contributions to the system nor shall such Member be required to have left contributions in the system upon ceasing to be an Employee. No Member shall, except as required in section 22.2-74, be allowed Creditable Service for time during which such Member was not an Eligible Employee of a Participating Employer.

DIVISION II - ESRs Service

Sec. 22.2-37. ESRs Service credit..

Each Eligible Employee shall receive credit for all Membership Service rendered while a Member of ESRs and any Prior Service with the ERS.

Sec. 22.2-38. Portability.

(a) The Board may enter into an agreement with the Virginia Retirement System (VRS) or another political subdivision of the Commonwealth having a defined benefit plan which is not supplemental to the Virginia Retirement System, whereby any vested ESRs Member may be granted Creditable Service, as determined by the Board, for service rendered with the VRS or with, another political subdivision upon the transfer of assets pursuant to the agreement and in accordance with the procedures established by the Board.

(b) The Board may transfer assets on behalf of a vested Member to the VRS pursuant to the agreement between the Board and the Virginia Retirement System.

(c) The Board may transfer assets on behalf of a vested Member to a defined benefit plan of another political subdivision of the Commonwealth which is not supplemental to the VRS pursuant to the agreement between the Board and such other political subdivision.

Sec. 22.2-39. Purchase of service.

(a) Creditable Service for purposes of this Article shall also include service purchased by an ESRs Member pursuant to this section and in accordance with the procedures established by the Board. Upon completion of a service purchase described herein, the Board of Trustees, or its delegate, shall issue a Prior Service Certificate relating to the purchased service.

(b) Any Member in service who has been credited with five (5) or more years of Creditable Service or who will become vested as a result of the current purchased service, may, pursuant to the procedures described in subsections (d) or (e), purchase Creditable Service for all or part of the following:

- (1) Certified Creditable Service with a retirement system with which the city has entered into a portability agreement pursuant to subsections (a) and (b) of section 22.2-38 and section 51.1-801.1, Code of Virginia.
- (2) Service with the City in a grant position prior to July 1, 2000.

The Member must pay an amount equal to a percentage of the Member's present annualized Earnable Compensation or his Average Final Compensation during his thirty-six (36) highest consecutive months of Creditable Service (as determined pursuant to section 22.2-42). The percentage of present Earnable Compensation or average Earnable Compensation, whichever is greater, to be charged shall be determined by the City Plan's actuary based on reasonable factors and assumptions approved by the Board of Trustees intended to reflect the actual cost to the City Plan of the benefit to be provided as a result of the purchased service. If the Member does not pay the entire amount required, the Member's actual Creditable Service shall be prorated on a linear basis. Notwithstanding the foregoing, if the Member does not pay the entire amount required due to the Member's death while an employee and such Member does not have sufficient Creditable Service to be entitled to a death benefit under section 22.2-67, then the amount paid by the Member to purchase service shall be refunded to the Member's spouse or if none, to the Member's estate as soon as possible following the date of the Member's death.

(c) No service may be purchased under this section if such service is considered in the calculation of any retirement benefit either under this Chapter as a result of portability or by another retirement system.

(d) Upon an election by a Member to purchase Creditable Service pursuant to this section and the receipt by the Participating Employer of a binding and irrevocable salary reduction election executed by the Member on a form provided by the Board for this purpose, the Participating Employer shall pay to the City Plan an equivalent amount in lieu of the Member's contribution required to purchase Creditable Service pursuant to this section. The Member shall not be given the option of choosing to receive the contributed amounts directly instead of having them paid by the Participating Employer to the City Plan. Such election shall not be effective prior to the receipt of the signed election. Contributions made by the Participating Employers pursuant to this section shall be considered Earnable Compensation for purposes of this Chapter. Such contributions shall be paid to the trust fund by the Participating Employer from the same source of funds as used in paying the wages to affected Members. Creditable Service available for purchase that is not purchased using the procedure described in this subsection may be purchased using the procedure described in subsection (e).

(e) In lieu of the purchase by salary reduction election as described in subsection (d) or in addition thereto, the City Plan shall accept a direct trustee-to-trustee transfer of a lump sum in cash from a plan established pursuant to 457(b) of the Internal Revenue Code of 1986, as amended by a governmental employer or a plan or program established pursuant to Section 403(b) of the Internal Revenue Code of 1986, as amended as payment by a Member for the purchase of Creditable Service described in subsection (b). Creditable Service purchased with the lump sum shall be determined by dividing the lump sum by the applicable percentage described in subsection (b) multiplied by the greater of the Member's present annualized Earnable Compensation or his Average Final Compensation during his thirty-six (36) highest consecutive months of Creditable Service (as determined pursuant to section 22.2-42). Creditable Service available for purchase that is not purchased using the procedure described in this subsection, may be purchased using the procedure described in subsection (d).

DIVISION III - ERS Service

Sec. 22.2-40. ERS Service credit.

Each Eligible Employee commencing service, for the first time, after July 1, 1946, shall receive Membership Service for all service rendered while a Member of ERS.

Sec. 22.2-41. Prior Service credit generally.

Service prior to July 1, 1946 for employees whose date of hire was before July 1, 1946 shall be based upon the Prior Service Certificate, the Employee's statement of all service as an Employee rendered by him prior to said date for which he claims credit, whether continuous or not, and of such other facts as the Board may require for the proper operation of the system. The Board shall fix and determine, by appropriate rules and regulations, the amount of service in any year which is equivalent to a year of service, but in no case shall more than one (1) year of service be creditable for all service in one (1) calendar year, nor shall the Board allow credit as service for any period of more than one (1) month's duration during which the Employee was absent without pay. The Board shall verify, as soon as practicable after the filing of such statements of service, the service therein claimed, and shall issue Prior Service certificates certifying to each Member the number of years of Prior Service with which he is credited. As long as membership continues, a Prior Service Certificate shall be final and conclusive for retirement purposes as to such Prior Service credit; provided, however, that any Member may, within one (1) year after the date of issuance or modification of such certificate, request the Board to modify or correct his Prior Service Certificate.

ARTICLE VII. DETERMINATION OF BENEFITS

DIVISION I - ESRS

Sec. 22.2-42. ESRS Definitions.

Average Final Compensation (as used for purposes of determining retirement allowances under this division) shall mean the average annual Earnable Compensation, as defined by section 22.2-2, of a Member during the thirty-six (36) consecutive months during which the Member has Creditable Service yielding the highest such average prior to retirement. Months in which the Member has no Creditable Service shall not be included in determining the thirty-six (36) consecutive months.

System shall mean the Employees' Supplemental Retirement System of the City of Roanoke hereinafter referred to as the ESRS.

Normal Retirement Age means:

(1) For firefighters and deputized police officers the earlier of (i) attainment of age sixty-five (65) and five (5) years of Creditable Service, or (ii) the attainment of age forty-five (45) and any combination of age and years of Creditable Service that equals not less than the sum of seventy (70). Only service as a firefighter or deputized police officer shall be credited to determine eligibility; provided, however, should any firefighter or deputized police officer become disabled for his regular duties as a firefighter or deputized police officer as a result of an accident occurring in the line of duty or as a result of an occupational disease and such firefighter or deputized police officer is transferred to another position in the City service, then such Member shall continue to accrue Creditable Service as a firefighter or deputized police officer and shall remain subject to the Normal Retirement Age established by this subsection as if he had remained a firefighter or deputized police officer. Any Member employed on December 1, 1997, as a firefighter who was employed by the City in an emergency medical services capacity prior to October 30, 1995, shall receive credit under this subpart for service from the later of (i) July 1, 1989, or (ii) the date on which the employee became a Member working in an emergency medical services capacity.

(2) For all other Members not described in (1) above the earlier of (i) the attainment of age sixty-five (65) and five (5) years of Creditable Service, or (ii) the attainment of age fifty (50) and any combination of age and years of Creditable Service that equals not less than the sum of eighty (80).

(3) With respect to any person employed after having attained the age of sixty (60) years, Normal Retirement Age shall be such person's age upon employment increased by five (5) years.

Sec. 22.2-43. Normal service retirement.

(a) Eligibility. A Member who remains an active Member until his Normal Retirement Age shall be eligible to receive an unreduced normal retirement benefit commencing on the first day of the month next following or coincident with the date of his termination of employment.

(b) Amount of normal retirement benefit on or after Normal Retirement Age. The retirement allowance shall be two and one-tenth percent (2.1%) of the Member's Average Final Compensation for each year of Creditable Service subject to a maximum of sixty-three percent (63%) of Average Final Compensation. Only Creditable Service and Average Final Compensation upon date of termination of employment will be used in the computation of the retirement allowance.

Sec. 22.2-44. Early service retirement allowance.

(a) Eligibility. A Member who has had five (5) or more years of Creditable Service and has attained the age of fifty-five (55) shall be eligible to receive an early retirement benefit commencing on the first day of the month next following or coincident with the date of termination of employment.

(b) Amount of early retirement benefit. The retirement allowance shall be two and one-tenth percent (2.1%) of the Member's Average Final Compensation for each year of Creditable Service subject to a maximum of sixty-three percent (63%) of Average Final Compensation. Only Creditable Service and Average Final Compensation upon date of termination of employment will be used in the computation of the retirement allowance.

(c) This retirement allowance may be deferred until the date when the Member first actually attains the earlier of (1) age sixty-five (65), or, (2) age fifty-five (55) and thirty (30) years of Creditable Service and becomes payable without further adjustment.

(d) If the Member elects payment to begin prior to the earlier of (1) age sixty-five (65), or, (2) age fifty-five (55) and thirty (30) years of Creditable Service, then the benefit is reduced taking into account the number of months by which actual payment precedes the earlier of: (1) the date the Member actually attains age sixty-five (65); or (2) age fifty-five (55) and thirty (30) years of Creditable Service. The Pension commencing immediately shall be equal to the deferred pension reduced by one-half (1/2) of one (1) percent for each of the first sixty (60) such months by which actual payment precedes the earlier of the date determined in (1) or (2) above, and, one-quarter (1/4) of one (1) percent for each additional month in excess of sixty (60) months by which actual payment precedes the date determined in (1) or (2) above.

Sec. 22.2-45. Vested allowance.

(a) Eligibility. A Member with five (5) or more years of Creditable Service who, for reasons other than death or retirement under any other provision of this Article, ceases

to be employed by a Participating Employer shall be entitled to a vested allowance, as provided for in sections 22.2-43, 22.2-44, or 22.2-58.

(b) Calculation of allowance. The vested allowance commencing upon the actual attainment of the earlier of (1) age sixty-five (65), or, (2) age fifty-five (55) and thirty (30) years of Creditable Service shall be computed as a vested service retirement allowance on the basis of the Member's Average Final Compensation and Creditable Service at the time of his termination.

(c) Payment of the vested allowance. The vested allowance may commence to be paid at any time after the Member has reached the age required for Early Retirement subject to any applicable reductions for early payment as set out in section 22.2-44(d).

(d) Applicability of multiplier. Any Member entitled to a vested allowance who ceased to be an Employee of a Participating Employer prior to January 1, 1999, shall have his vested allowance calculated pursuant to sections 22.2-43 and 22.2-44 as such sections existed prior to January 1, 1999 (utilizing a multiplier of two percent (2.0%) for each year of Creditable Service). Any Member entitled to a vested allowance who ceases to be an Employee of a Participating Employer on or after January 1, 1999, and who meets the condition established by section 22.2-35(1) shall have his vested allowance calculated pursuant to sections 22.2-43 and 22.3-44 as such sections exist on and after January 1, 1999 (utilizing a multiplier of two and one-tenth percent (2.1%) for each year of Creditable Service).

DIVISION II - ERS

Sec. 22.2-46. ERS Definitions.

Average Final Compensation (as used for purposes of determining retirement allowances under this division) shall mean the annual Earnable Compensation, as defined by section 22.2-2, of a Member during his twelve (12) consecutive months of Creditable Service yielding the highest such average prior to retirement.

Normal Retirement Age means the age of sixty (60) or the age prior thereto at which a Member completes thirty (30) years of Creditable Service.

Social Security Benefit shall mean the annual benefit payable in monthly installments as the primary insurance amount under Title II of the Federal Social Security Act.

System shall mean the Employees' Retirement System of the City of Roanoke hereinafter referred to as the ERS.

Sec. 22.2-47. Retirement and service retirement allowance generally.

(a) Eligibility. Any Member who remains an active Member until his Normal Retirement Age shall be eligible to receive an unreduced normal retirement benefit

commencing on the first day of the month next following or coincident with the date of his termination of employment.

(b) Amount of normal retirement benefit on or after Normal Retirement Age. The Service Retirement allowance shall consist of a Pension equal to one-seventieth of the Member's Average Final Compensation multiplied by the number of years of Creditable Service. In the case of a Member retiring on or after July 1, 1970, and after he has attained the age of sixty-five (65) years, an additional Pension shall be payable to him, if he is not entitled to a Social Security Benefit at the time of such retirement on the basis of his covered earnings under the Social Security Act, which shall be equal to the primary insurance amount provided under Title II of the Social Security Act as the same may be from time to time amended and adjusted; provided, however, that the Member shall be required to submit evidence satisfactory to the Board that the Social Security Administration has determined that no Social Security Benefit is payable to him, nor would such a benefit be payable upon proper application therefore but for the receipt of income covered under the Social Security Act.

Sec. 22.2-48. Early service retirement allowance.

(a) Eligibility. A Member who remains an active Member until he has completed at least twenty (20) or more years of Creditable Service shall be eligible to receive an early retirement benefit commencing on the first day of the month next following or coincident with the date of his termination of employment.

(b) Amount of early retirement benefit. The retirement allowance shall consist of a Pension equal to one-seventieth of the Member's Average Final Compensation multiplied by the number of years of Creditable Service.

(c) The early service retirement allowance shall consist of either:

- (1) A deferred pension commencing upon the attainment of the Normal Retirement Age and computed as a service retirement allowance on the basis of the Member's Average Final Compensation and Creditable Service at the time of his early retirement; or
- (2) A pension commencing immediately which shall be equal to the deferred pension reduced by five-ninths of one (1) percent for each month between the date of commencement of the pension and the attainment of the Normal Retirement Age, not in excess of sixty (60) months, and five-eighteenthths of one (1) percent for each such month in excess of sixty (60) months.

(d) If a retired Member who has elected to receive a deferred retirement allowance under this section dies before his retirement allowance normally becomes due, the only payment made shall be the nonoccupational death benefit, as provided under subparagraph (1) of section 22.2-70, unless there is a surviving spouse entitled to a pension under the provisions of section 22.2-69.

Sec. 22.2-49. Vested allowance.

(a) Eligibility. A Member with ten (10) or more years of Creditable Service who, for reasons other than death or retirement under any other provision of this article, ceases to be employed by a Participating Employer on or after October 1, 1977, shall be entitled to a vested allowance as provided for in section 22.2-47, or 22.2-48, subject to the restrictions of this section, payable to him in accordance with this section commencing either on his Normal Retirement Age or upon application of the former Employee filed not less than thirty (30) days prior to the commencement date, prior to the Normal Retirement Age but on or after the date as of which he would have completed twenty (20) years of Creditable Service if he had continued in service with a Participating Employer. Any Member who terminated Service for any reason prior to October 1, 1977, and who returns to Service after such date shall work one (1) continuous year after returning before qualifying for credit toward a vested allowance for Service rendered prior to October 1, 1977, except when such person dies or becomes disabled after returning to service, in which case he shall become entitled to credit for Prior Service as of the date of such death or disability without having to meet the requirement of one (1) year of continuous service.

(b) The vested allowance commencing upon the attainment of Normal Retirement Age shall be computed as a Service Retirement allowance on the basis of the Member's Average Final Compensation and Creditable Service at the time of his termination.

(c) The vested allowance commencing prior to the former Member's Normal Retirement Age, but on or after the date as of which he would have completed twenty (20) years of Creditable Service if he had continued in Service, shall be equal to the Pension computed in accordance with subsection (b) of this section, reduced by five-ninths of one (1) percent for each month between the date of commencement of the pension and the attainment of the Normal Retirement Age, not in excess of sixty (60) months, and five-eighteenthths of one (1) percent for each additional month in excess of sixty (60) months.

(d) A vested allowance shall not be payable pursuant to this section with respect to any Member whose Service was terminated prior to October 1, 1977, and who was not in Service after that date.

ARTICLE VIII. DISABILITY RETIREMENT

Sec. 22.2-50. Nonoccupational disability retirement allowance.

(a) Eligibility. Upon application of a Member in service or the head of such Member's department, any such Member who has had five (5) or more years of Creditable Service may be retired by the Board on a nonoccupational Disability Retirement allowance not more than one (1) year after the filing of such application; provided, that the Board's

Medical Examiner or Examiners shall certify after medical examination (i) that such Member is mentally or physically totally incapacitated for the further performance of any gainful employment for which the Member is qualified with his most recent Participating Employers, and (ii) that such incapacity is likely to be permanent.

(b) Amount of benefit. The nonoccupational Disability Retirement allowance shall be computed as a Service Retirement allowance on the basis of the Member's Average Final Compensation and Creditable Service at the time of his retirement (accrued benefit), provided, in the case of an ERS Member, if such Member has not attained his Normal Retirement Age and the retirement allowance computed as herein provided is less than twenty-five percent (25%) of the Member's Average Final Compensation, the Pension shall be increased to the lesser of such twenty-five percent (25%) , or the amount that would have been payable to the Member as a Service Retirement allowance on retirement at his Normal Retirement Age if he continued in service until such age without change in his Average Final Compensation. Upon approval of an application by the Board, benefits shall be retroactive to the date after all forms of leave have been exhausted. This benefit shall be reduced by any workers' compensation benefits as provided for in section 22.2-53.

Sec. 22.2-51. Occupational disability retirement allowance.

(a) Eligibility. Upon the application of a Member in service or the head of such Member's department, any Member who has been totally and permanently incapacitated for duty as a natural and proximate result of an accident occurring while in the actual performance of duty at some definite time and place without willful negligence on his part may be retired by the Board on an occupational Disability Retirement allowance not more than one (1) year after the filing of such application; provided that the Board's Medical Examiner or Examiners shall certify after medical examination (i) that such Member is mentally or physically totally incapacitated for the further performance of any gainful employment for which the Member is qualified with his most recent Participating Employers, (ii) that such incapacity is the natural and proximate result of an accident occurring while in the actual performance of duty, and (iii) that such incapacity is likely to be permanent.

(b) Amount of benefit. The occupational Disability Retirement allowance shall be equal to sixty-six and two-thirds percent (66-2/3%) of a Member's Average Final Compensation. This benefit shall be reduced by workers' compensation benefits as provided for in section 22.2-53. This benefit shall not be reduced due to payment commencing prior to Normal Retirement Age.

Sec. 22.2-52. Application for workers' compensation benefits required.

As a condition precedent to application for an occupational disability benefit from the City Plan, a Member must first apply for workers' compensation benefits and be awarded such benefits. Receipt of an award under the workers' compensation act shall

not relieve an applicant of the duty to prove his qualification for a benefit under the standards established by this Chapter for the City Plan.

Sec. 22.2-53. Workers' compensation benefits offset against retirement benefits.

(a) Any amounts which may be paid or payable under the provisions of the Virginia Workers' Compensation Act or any similar law to any Member or Beneficiary, or to the dependents of any Member or Beneficiary, on account of any injury, occupational disease or disability or incapacity, total or partial, or death shall in such manner as the Board shall determine, be offset against and payable in lieu of any benefits payable out of funds provided under the provisions of the City Plan.

(b) In the case of a Member, Beneficiary or dependent of a Member or Beneficiary who elects to receive a lump sum settlement in lieu of periodic payments for temporary disability or death compensable under the Virginia Workers' Compensation Act, the retirement allowance shall cease or be reduced, as the case may be. The amount of reduction shall be determined by the workers' compensation benefit which such person would have received had the lump sum settlement not been consummated, including all cost of living adjustments permitted by the Virginia Workers' Compensation Commission, and had such person received periodic payments for disability or death for the maximum amount of time otherwise permitted under the Virginia Workers' Compensation Act. The reduction shall continue each month for a period of months, until such time as the total amount of periodic payments for disability or death payable to such person under the Virginia Workers' Compensation Act would have been offset had the lump sum settlement not been consummated.

(c) The above notwithstanding, no amount paid or payable under the provisions of the Virginia Workers' Compensation Act, or any similar law to any Member or Beneficiary, or to the dependents of any Member or Beneficiary, on account of permanent partial disability from any injury shall be offset against any benefits payable out of funds under the provisions of the City Plan.

Sec. 22.2-54. Presumptions applicable to death or disability of firefighters and police officers.

The policies, presumptions and procedures established by section 27-40.1, Code of Virginia (1950), as amended, with respect to death of, or any condition or impairment of health, of any firefighter caused by respiratory disease, hypertension or heart disease, and by section 51-122, Code of Virginia (1950), as amended, with respect to death of, or any condition or impairment of health, of any deputized police officer of the police department caused by hypertension or heart disease, are hereby incorporated by reference and shall be applicable in the case of any application filed by any firefighter or any deputized police officer of the police department or any survivor thereof for occupational disability retirement allowance or occupational death benefit under the employees' supplemental retirement system or the employees' retirement system.

Sec. 22.2-55. Periodic medical examination of beneficiaries retired on account of disability.

Once each year during the first five (5) years following the retirement of a Member on a nonoccupational or an occupational Disability Retirement allowance, and once in every three-year period thereafter, the Board may require any disability beneficiary to undergo a medical examination if he has not yet attained his Normal Retirement Age. Such examination shall be made by a Medical Examiner at the Examiner's office during normal business hours. For this purpose, the secretary-treasurer shall select a Medical Examiner or Examiners who are located within a reasonable proximity of the Member's place of residence. Should any disability beneficiary refuse to submit to such medical examination, his retirement allowance may be discontinued by the Board until his withdrawal of such refusal, and should his refusal continue for one (1) year, all his rights in and to his pension may be revoked by the Board.

Sec. 22.2-56. Modification of disability retirement allowances.

(a) Should the Board find that any disability beneficiary is engaged in or is able to engage in a gainful occupation paying more than the difference between his Pension and his Average Final Compensation adjusted pursuant to any applicable amendments to the ranges of the Participating Employer's pay plan subsequent to the Member's retirement, the Board shall reduce the amount which, together with the amount earnable by him, shall equal the amount of his Average Final Compensation adjusted as provided above. Should the earning capacity of such Beneficiary from any gainful occupation be later changed, the amount of his Pension may be further modified in a like manner.

(b) The Board or the secretary-treasurer of the City Plan, upon the authority of the Board, shall be authorized to make such inquiries of persons who are disability beneficiaries under the City Plan as are necessary to determine whether any such person is engaged or is able to engage in a gainful occupation paying more than the difference between his Pension and his Average Final Compensation increased by the average cost of living allowances to city employees. Such inquiries shall be answered under oath. Any disability beneficiary may also be required to produce copies of tax returns and tax withholding forms (W-2s) to establish income. If any disability beneficiary should refuse or fail to provide the information required by this section, the Board shall be authorized to terminate such person's benefits until compliance is achieved.

ARTICLE IX. PAYMENT OF BENEFITS

DIVISION I - General

Sec. 22.2-57. Form of Payment of benefits.

All annuity payments shall be made on a monthly basis. The Board of Trustees shall establish all required administrative procedures needed to accomplish such monthly payments.

Sec. 22.2-58. Lump sums.

(a) The Board may set a dollar amount for a monthly benefit that shall be paid in the form of a lump sum. Except as provided in subsection (c), monthly benefits of more than the amount determined by the Board shall not be paid in the form of a lump sum. Notwithstanding the above, monthly benefits whose lump sum value is above the amount as shall be from time to time established by Section 411(a)(11), Internal Revenue Code of 1986, as amended, shall require Member consent before a lump sum is paid. Any beneficiary shall be required to receive a lump sum distribution of the amount as shall be from time to time established by Section 411(a)(11), Internal Revenue Code of 1986, as amended, or less.

(b) All lump sums shall be based on the applicable interest rate and mortality table as defined in Section 417(e) of the Internal Revenue Code of 1986, as amended, effective on the first day of the calendar year in which payment is made.

(c) Upon the written agreement of the Employee and the secretary-treasurer of the City Plan, monthly benefits payable to a Member who is retired on a Disability Retirement allowance may be paid in the form of a lump sum by purchase of one (1) or more annuities or a combination of lump sum and annuity payments.

Sec. 22.2-59. Rollover of lump sum distributions.

Effective January 1, 1993, notwithstanding anything to the contrary in this Article, but subject to any de minimis or other exceptions or limitations provided for under Section 401(a)(31) of the Internal Revenue Code of 1986, as amended, any prospective recipient (whether a Member, a surviving spouse, a current or former spouse who is an alternate payee under an approved domestic relations order or any other person eligible to make a rollover) of a distribution from the City Plan which constitutes an "eligible rollover distribution" (to the extent otherwise includible in the recipient's gross income) may direct the Board to pay the distribution directly to an "eligible retirement plan". For purposes hereof, the following terms have the meanings assigned to them in Section 401(a)(31) of the Internal Revenue Code of 1986, as amended, and, to the extent not inconsistent therewith, shall have the following meanings:

(1) The term "eligible retirement plan" means a defined contribution plan which is either an individual retirement account described in Section 408(a) of the Internal Revenue Code of 1986, as amended, an individual retirement annuity described in Section 408(b) of the Internal Revenue Code of 1986, as amended (other than an endowment contract), an annuity plan described in Section 403(a) of the Internal Revenue Code of 1986, as amended, or a qualified trust described in Section 401(a) of the Internal Revenue Code of 1986, as amended, that accepts the prospective recipient's eligible rollover distribution. For distributions made before January 1, 2002, in the case of an eligible rollover distribution payable to a Participant's surviving spouse, an "eligible retirement plan" means only an individual retirement account or individual retirement annuity. Effective for distributions made after December 31, 2001, an eligible retirement plan shall also mean an annuity contract described in Section 403(b) of the Code and an eligible plan under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to account separately for amounts transferred into such plan from this Plan. Effective for distributions made after December 31, 2001, the definition of eligible retirement plan applicable to a Participant shall also apply in the case of a distribution to a Participant's surviving spouse and to a Participant's spouse or former spouse who is the alternate payee under an approved domestic relations order.

(2) The term "eligible rollover distribution" means any distribution other than:

(A) A distribution which is one of a series of substantially equal periodic payments (not less frequently than annually) made either for the life (or life expectancy) of the recipient or the joint lives (or joint life expectancies) of the recipient and his beneficiary who is an individual or for a specified period of ten (10) or more years, or

(B) A distribution to the extent it is required under the minimum distribution requirement of Section 401(a)(9) of the Internal Revenue Code of 1986, as amended.

Any such direction shall be filed with the Board in such form and at such time as the Board may require and shall adequately specify the eligible retirement plan to which the payment shall be made. The Board shall make payment as directed only if the proposed transferee plan will accept the payment. Any such plan to plan transfer shall be considered a distribution option under this plan and shall be subject to all the usual distribution rules of the City Plan (including but not limited to the requirement of an advance explanation of the option). The Board is authorized in its discretion, on a uniform and non-discriminatory basis, to apply any discretionary de minimis or other discretionary exceptions or limitations provided for under Section 401(a)(31) of the Internal Revenue Code of 1986, as amended, in effecting or declining to effect plan to plan transfers hereunder. Within a reasonable time (generally not more than ninety (90) nor less than

thirty (30) days) before the benefit payment date of a prospective recipient of an eligible rollover distribution from the plan, the Board shall provide the prospective recipient with a written explanation of the rollover and tax rules required by Section 402(f) of the Internal Revenue Code of 1986, as amended.

Sec. 22.2-60. Permissible changes to optional forms of payment.

A retired Member who has elected an option described in section 22.2-62 or section 22.2-63 may, in a manner prescribed by the Board, revoke such election and elect to receive from the time of notification the retirement allowance to which he would have been entitled had no option been elected initially and no cost of living increases been granted in the interim, if (a) the original survivor has died or (b) a final decree of divorce of the retired Member from the original survivor has been entered which releases both the Member and the City Plan from any liability to or obligation of the City Plan to make any payments to the original survivor.

Sec. 22.2-61. Retirement supplement.

Any Member of the City Plan who is an Employee of a Participating Employer (not including employees of the City of Roanoke School Board), and who retires or who has retired after earning twenty (20) or more years of Creditable Service, but prior to attaining the age of sixty-five (65), shall be paid a monthly supplement of the greater of one hundred fifty-nine (\$159.00) or an amount equal to seventy-five percent (75%) of the amount the City of Roanoke contributes monthly toward the cost of a single active employee's health insurance, as such contribution may be changed from time to time, commencing with the first month of retirement and terminating with the month in which the Member attains age sixty-five (65). This supplement shall not be subject to any cost of living adjustment which may be provided under the City Plan. This supplement shall be a personal benefit applicable to an eligible Member only without any right of survivorship. Upon the death of a Member who is receiving such benefit, the monthly payment shall be made for the month of such Member's death and shall terminate with the next succeeding month. This benefit shall not be applicable to retirees receiving the early retirement incentive plan supplement granted in 1991.

DIVISION II. ESRs

Sec. 22.2-62. Optional spousal allowance.

Until the effective date of retirement, any Member may elect to convert the retirement allowance otherwise payable to him into an optional spousal allowance of equivalent actuarial value in accordance with one (1) of the optional forms set out below. If an optional spousal allowance is selected and the spouse dies before the Member, the Member's Pension shall, as of the first day of the next month after the death of the Member's spouse, be increased by an amount equal to the amount by which the Pension was reduced at the date of retirement by virtue of the Member's election of a spousal allowance. The Member's spouse, if any, shall be required to sign the election

form designated by the Board, when the Member applies for retirement. A spouse must be married to the Member at retirement and one (1) year prior to death of the Member or retired Member to be eligible for a spousal allowance. The spousal allowance shall continue until the death of the spouse. Except as provided in section 22.2-60, a Member's election of an optional spousal allowance shall be irrevocable. A spousal benefit shall be reduced by any workers' compensation benefit as provided for in section 22.2-53. The optional forms are as follows:

Option 1: A reduced retirement allowance payable during the life of the retired Member, with the provisions that upon his death his reduced retirement allowance shall be continued and paid to his spouse as he shall have nominated by written designation duly acknowledgeable and filed with the Board at the time of his retirement (the Joint and 100% Spouse Survivor Option) ; or

Option 2: A reduced retirement allowance payable during the life of the retired Member, with the provision that upon his death three-quarters of his reduced retirement allowance shall be continued and paid to his spouse as he shall have nominated by written designation duly acknowledged and filed with the Board at the time of his retirement (the Joint and 75% Spouse Survivor Option); or

Option 3: A reduced retirement allowance payable during the life of the retired Member, with the provision that upon his death one-half of his reduced retirement allowance shall be continued and paid to his spouse as he shall have nominated by written designation duly acknowledged and filed with the Board at the time of his retirement (the Joint and 50% Spouse Survivor Option) .

The actuarial factors used to convert normal form of payment (single life annuity payable monthly) to an optional form of payment are set forth in the Administrative Procedures Manual maintained by the Board. Such tables shall comply with the requirements of section 401(a)(9) of the Internal Revenue Code

Should such Member die within thirty (30) days after retirement, his optional election shall not be effective, he shall be considered a Member in service at the time of his death, and the only benefit payable on his account shall be the nonoccupational death benefit provided in section 22.2-67 reduced by any retirement allowance payments received by him prior to his death.

DIVISION III - ERS

Sec. 22.2-63. Optional or modified retirement allowance.

Until the effective date of retirement, any Member may elect to convert the retirement allowance otherwise payable to him into a modified retirement allowance of equivalent actuarial value in accordance with one (1) of the optional forms set out below. If a modified retirement allowance is selected and the Beneficiary dies before the Member, the Member's Pension allowance shall, as of the first day of the next month after the

death of the Member's Beneficiary, be increased by an amount equal to the amount by which the Pension was reduced at the date of retirement by virtue of the Member's election of a modified retirement allowance. A modified retirement allowance shall continue until the death of the Beneficiary. Except as provided in section 22.2-60, a Member's election of a modified retirement allowance shall be irrevocable. The optional forms are as follows:

Option 1: A reduced retirement allowable payable during the life of the retired Member, with the provision that upon his death his reduced retirement allowance shall be continued throughout the life of and paid to such person as he shall have nominated by written designation duly acknowledgeable and filed with the Board at the time of his retirement (the Joint and 100% Survivor Option) ; or

Option 2: A reduced retirement allowance payable during the life of the retired Member, with the provisions that upon his death one-half of his reduced retirement allowance shall be continued throughout the life of and paid to such person as he shall have nominated by written designation duly acknowledged and filed with the Board at the time of his retirement (the Joint and 50% Survivor Option) ; or

Option 3: A reduced retirement allowance payable during the life of the retired Member, with the provisions that, upon his death, some other benefit shall be payable; provided, that the total value of the allowance during his life and the succeeding benefit shall be computed to be of equivalent actuarial value to the retirement allowance which he would receive without optional modification; provided further that the benefit shall be approved by the Board (the Joint and x% Survivor Option) .

The actuarial factors used to convert to an option form of payment are set forth in the Administrative Procedures Manual maintained by the Board.

Should such Member die within thirty (30) days after retirement, his optional election shall not be effective, he shall be considered a Member in service at the time of his death, and the only benefit payable on his account shall be the nonoccupational death benefit provided in section 22.2-70 reduced by any retirement allowance payments received by him prior to his death.

Notwithstanding anything herein to the contrary, the distribution options available to Members shall be limited by the following restrictions:

(1) The present value of payments made to the Member must be more than fifty (50) percent of the present value of the total payments to be made to the Member and his beneficiary (based on the life expectancies as of the date benefit commence).

(2) Benefits will be distributed commencing not later than such taxable year:

(i) Over the life of such Member or over the lives of such Member and his spouse, or;

(ii) Over a period not extending beyond the life expectancy of such Member or the life expectancy of such Member and his spouse.

(3) If a Member dies before his entire interest has been distributed to him, or distribution has been commenced in accordance with (2)(ii) above to his surviving spouse and such surviving spouse dies before his entire interest has been distributed to such surviving spouse, then his entire interest will be distributed within five (5) years after his death (or the death of his spouse). The preceding sentence shall not apply to term certain distributions.

With respect to distributions beginning in calendar years beginning on or after January 1, 2002, the Plan will apply the minimum distribution requirements of Section 401(a)(9) of the Internal Revenue Code and described in this section, in accordance with the regulations under Section 401(a)(9) of the Internal Revenue Code that were proposed on January 17, 2001.

ARTICLE X. DEATH BENEFITS

DIVISION I - General

Sec. 22.2-64. Application for workers' compensation benefits required.

As a condition precedent to application for an occupational death benefit from the City Plan, a Member's Beneficiary must first apply for workers' compensation death benefits and be awarded such benefits. Receipt of an award under the workers' compensation act shall not relieve an applicant of the duty to prove his qualification for a benefit under the standards established by this Chapter for the City Plan.

Sec. 22.2-65. Workers' compensation benefits offset against death benefits.

(a) Any amounts which may be paid or payable under the provisions of the Virginia Workers' Compensation Act or any similar law to any Member or Beneficiary, or to the dependents of any Member or Beneficiary, on account of death shall in such manner as the Board shall determine, be offset against and payable in lieu of any benefits payable out of funds provided under the provisions of the City Plan.

(b) In the case of a Member, Beneficiary or dependent of a Member or Beneficiary who elects to receive a lump sum settlement in lieu of periodic payments for temporary disability or death compensable under the Virginia Workers' Compensation Act, the retirement allowance shall cease or be reduced, as the case may be. The amount of reduction shall be determined by the workers' compensation benefit which such person would have received had the lump sum settlement not been consummated, including all cost of living adjustments permitted by the Virginia Workers' Compensation Commission, and had such person received periodic payments for disability or death for

the maximum amount of time otherwise permitted under the Virginia Workers' Compensation Act. The reduction shall continue each month for a period of months, until such time as the total amount of periodic payments for disability or death payable to such person under the Virginia Workers' Compensation Act would have been offset had the lump sum settlement not been consummated. However, in the event a Member dies after electing to receive a lump sum settlement in lieu of periodic payments for temporary disability compensable under the Virginia Workers' Compensation Act, the death benefit payable to a Beneficiary or dependent of a Beneficiary shall be offset only to the extent the amount of the lump sum settlement in lieu of periodic payments for temporary disability compensable under the Virginia Workers' Compensation Act has not already been offset by any benefits payable out of funds provided under the provisions of the City Plan.

(c) The above notwithstanding, no amount paid or payable under the provisions of the Virginia Workers' Compensation Act, or any similar law to any Member or Beneficiary, or to the dependents of any Member or Beneficiary, on account of permanent partial disability from any injury shall not be offset against any benefits payable out of funds under the provisions of the City Plan.

Sec. 22.2-66. Presumptions applicable to death or disability of firefighters and police officers.

The policies, presumptions and procedures established by section 27-40.1, Code of Virginia (1950), as amended, with respect to death of, or any condition or impairment of health, of any firefighter caused by respiratory disease, hypertension or heart disease, and by section 51-122, Code of Virginia (1950), as amended, with respect to death of, or any condition or impairment of health, of any deputized police officer of the police department caused by hypertension or heart disease, are hereby incorporated by reference and shall be applicable in the case of any application filed by any firefighter or any deputized police officer of the police department or any survivor thereof for occupational disability retirement allowance or occupational death benefit under the employees' supplemental retirement system or the employees' retirement system.

DIVISION II - ESRS

Sec. 22.2-67. Nonoccupational death benefit.

(a) **Eligibility.** Upon the receipt of proof, satisfactory to the board, of the death of an active Member with ten (10) or more years of Creditable Service which was not the result of an accident in the actual performance of duty, as defined in section 22.2-68, a nonoccupational death benefit shall be paid to such person's lawful spouse as of the date of death and with whom he has been married for least one (1) year at date of death, if any.

(b) **Benefit.** The nonoccupational death benefit shall be an annuity benefit equal to fifty (50) percent of his Accrued Benefit on his date of death (but not reduced by any

early payment reduction factor). The benefit shall commence on the day next following death. If the surviving spouse is more than sixty (60) months younger than the Member the benefit shall be reduced by one-sixth of one (1) percent for each full month in excess of sixty (60) months.

Sec. 22.2-68. Occupational death benefit.

(a) Eligibility. If, upon the receipt of proof, satisfactory to the Board, of the death of a Member in service indicating that such death was the natural and proximate result of an accident, occurring while the Member was in the actual performance of duty, the Board shall decide that death was the result of an accident in the actual performance of duty occurring at some definite time and place, and not caused by willful negligence on the part of the Member, there shall be paid the following benefit, in lieu of any benefit payable under the provisions of section 22.2-67.

(b) Benefits. The occupational death benefit shall be a Pension one-half of his Average Final Compensation payable to his spouse, if any, to continue until death; or if there is no spouse at date of the Member's death, then to his child or children under age eighteen (18), if he leaves children, divided in such manner as the Board, in its discretion, shall determine, to continue as a joint and survivorship pension for the benefit of the child or children under said age until every child dies or attains said age. This benefit shall be reduced by workers' compensation benefits as provided in section 22.2-65.

DIVISION III - ERS

Sec. 22.2-69. Pensions to spouses of retired Members or Members eligible to retire.

Upon the receipt of proof, satisfactory to the Board, (i) of the death, on or after July 1, 1973, of a Member in active service after the completion of twenty (20) or more years of Creditable Service or after the attainment of age sixty (60), or (ii) of the death of a Member who retired on or after July 1, 1973, or of the death of a former Member in receipt of a vested allowance pursuant to section 22.2-49, a Pension shall be payable to the surviving spouse, commencing on the day next following the date of death of the Member, retired Member or former Member in receipt of a vested allowance and ceasing upon the death of the spouse; provided, that the spouse was married to the retired Member or former Member at the time that payment of his benefit commenced; that the spouse was married to the Member, retired Member or former Member for at least one (1) year prior to his death; and that the Member, retired Member or former Member had not made an optional election under section 22.2-63 which was in full force and effect. The amount of the Pension shall be one-half of the retirement allowance or vested allowance to which the Member was entitled or would have been entitled had he retired at the time of death under the provisions of section 22.2-48, or under the provisions of section 22.2-47; provided, however, that if the surviving spouse is more than sixty (60) months younger than the Member, the benefit will be reduced by one-

sixth (1/6) of one (1) percent for each full month in excess of sixty (60) months. A spousal benefit shall be reduced by any workers' compensation benefit as provided for in section 22.2-65.

Sec. 22.2-70. Nonoccupational death benefit.

Upon the receipt of proof, satisfactory to the Board, of the death of a Member, not an occupational death as defined in section 22.2-71, there shall be paid to such person, if any, as the Member shall have nominated by written designation duly acknowledged and filed with the board otherwise to his estate:

If he was in service at the time of his death and had one (1) or more years of creditable service, a lump sum benefit equal to fifty (50) percent of his Earnable Compensation during the year immediately preceding his death. The benefit shall be reduced by any workers' compensation benefit as provided for in section 22.2-65.

Sec. 22.2-71. Occupational death benefit.

If, upon the receipt of proof, satisfactory to the Board, of the death of a Member in service indicating that such death was the natural and proximate result of an accident, occurring while the Member was in the actual performance of his duty, the Board shall determine that the death was the result of an accident during the actual performance of duty occurring at some definite time and place, and not caused by willful negligence on the part of the Member, there shall be paid, in lieu of any benefit payable under the provisions of sections 22.2-70 and 22.2-71:

A Pension of one-half of his Average Final Compensation payable to his spouse, if any, to continue until death; or if there is no spouse or the spouse dies before the youngest child of the deceased Member has attained age eighteen (18), then to his child or children under said age, if he leaves children, divided in such manner as the Board, in its discretion, shall determine, to continue as a joint and survivorship pension for the benefit of the child or children under said age until every child dies or attains said age; or if he leaves no spouse or children under the age of eighteen (18) years living at his death, then to his dependent parent or parents, divided in such manner as the Board in its discretion shall determine to continue for life; provided, that if he leaves no such beneficiary living at his death, the amount which otherwise would have been paid as a nonoccupational death benefit shall be paid. The benefit shall be reduced by any workers' compensation benefit as provided for in section 22.2-65.

ARTICLE XI. MAXIMUM BENEFITS AND OTHER LIMITATIONS AND SPECIAL RULES.

Sec. 22.2-72. Limitation on Earnable Compensation Taken into account.

Notwithstanding the foregoing, Earnable Compensation taken into account for purposes of determining benefits under the City Plan shall be limited by the compensation limit

pursuant to Section 401(a)(17) of the Internal Revenue Code of 1986, as amended. For purposes hereof, the compensation limit, for years beginning on or after July 1, 2001 is \$200,000 (as adjusted in \$5,000 increments from time to time by the adjustment factor described in Section 415 (d) of the Internal Revenue Code of 1986, as amended, on the basis of a base period of the calendar quarter beginning July 1, 2001). In determining average final compensation for periods beginning on or after July 1, 2001, the limit on creditable compensation applied to compensation attributable to periods prior to July 1, 2001 shall be \$200,000. For purposes of applying the limitation applicable to each year, the limit for a plan year shall be the limitation in effect for the calendar year in which the plan year begins determined without increases in the limitation for subsequent years.

Sec. 22.2-73. Limitation on annual benefits

(a) Notwithstanding any other provisions of this Article, the annual benefit under the City Plan of any Member and any related death or other benefit, shall, if necessary, be reduced to the extent required by Section 415(b) of the Internal Revenue Code of 1986, as amended, as adjusted by the Secretary of the Treasury pursuant to Section 415(d) of the Internal Revenue Code of 1986, as amended.

(b) Notwithstanding any other provisions of this article, for plan years beginning before January 1, 2000, if a Member participates in both the City Plan and a qualified defined contribution plan maintained by the city or any Participating Employer, the annual benefits under the City Plan and the annual additions to any qualified defined contribution plan maintained by the city shall not exceed the combined limit test described in Section 415(e) of the Internal Revenue Code of 1986, as amended. If necessary, the annual additions under the qualified defined contribution plan shall be reduced before benefits under City Plan are reduced in order to comply with such combined limit test.

Sec. 22.2-74. Military Service Notwithstanding any provision of this Chapter to the contrary, benefits and service credit with respect to qualified military service will be provided in accordance with section 414(u) of the Internal Revenue Code of 1986, as amended and the Uniformed Services Employment and Reemployment Rights Act of 1994.

**ARTICLE XII. POLICE AND FIRE DEPARTMENT PENSION PLAN AS OF
DECEMBER 31, 1945.**

**Sec. 22.2-75. Pensions for members of police and fire departments as of
December 31, 1945.**

Nothing in this Code or the ordinance adopting this Code shall affect the provisions of Chapter 2, Sections 1 through 9, of Title III of the Code of the City of Roanoke (1956), as derived from Ordinance Nos. 10457 and 10532, and amended by Ordinance Nos. 13889, 14053, 14550, 14632, 16595, 17858, 19043, 19578, 20387, 23025 and 23221, relating to retirement and pension benefits for members of the police and fire departments who were so employed on December 31, 1945, and such chapter and the

ordinances mentioned herein are hereby recognized as continuing in full force and effect to the same extent as if fully set out at length in this Code. Effective January 1, 1984, the annual pension of each person subject to the provisions of this section shall be increased by that amount, if any, by which such person's pension calculated without reference to the three hundred dollars (\$300.00) per month maximum established in Ordinance No. 20387 and Ordinance No. 23025 and without reference to the one hundred dollars (\$100.00) per month maximum established in Ordinance No. 23025 exceeds such person's pension calculated as provided in the above-referenced ordinances.

2. Chapter 22.1, Pensions and Retirement, consisting of §§22.1-1 through 22.1-82, of the Code of the City of Roanoke (1979), as amended, is hereby REPEALED.

3. Pursuant to Section 12 of the City Charter, the second reading of this ordinance by title is hereby dispensed with.

4. This ordinance shall be in full force and effect on and after June 1, 2002.

ATTEST:

City Clerk.



Office of the City Manager

May 20, 2002

Honorable Ralph K. Smith, Mayor
 Honorable William H. Carder, Vice Mayor
 Honorable William D. Bestpitch, Council Member
 Honorable C. Nelson Harris, Council Member
 Honorable W. Alvin Hudson, Jr., Council Member
 Honorable William White, Sr., Council Member
 Honorable Linda F. Wyatt, Council Member

Dear Mayor Smith and Members of City Council:

Subject: Notice of Use Limitation
 for Waste Unit Number 2,
 Middle Lot, Public Works
 Service Center

Background:

The City of Roanoke has been working with the Virginia Department of Environmental Quality (VDEQ) to appropriately remediate the area of the Middle Lot at the Public Works Service Center in accordance with a Consent Order dated March 21, 2000. Two areas of the property, called Unit Number 1 and Unit Number 2, are under consideration. Unit Number 2 contains approximately 0.26 acres. In order to complete this work and obtain VDEQ closure of the site, the VDEQ has requested that the City of Roanoke limit the future uses of Unit Number 2 to industrial uses through a Notice of Use Limitation that will be recorded in the City of Roanoke Circuit Court Clerk's Office.

Considerations:

The restriction allows the use of Unit Number 2 for the construction and grading of a stadium/amphitheater and parking area. It also allows other uses which must meet the following requirements; that in the opinion of an independent Registered Professional Engineer and with the approval of the VDEQ, such other uses shall present no greater risk of harm to health, safety, public welfare or the environment than the stadium/amphitheater or parking area uses. Additional restrictions, which will require consultation with VDEQ, would apply if Unit Number 2 might be used for purposes other than those set forth above. However, uses that are listed as not allowed by the restriction are construction and occupancy of residences, playgrounds, childcare centers or public gardens.

Honorable Mayor and Members of Council
May 20, 2002
Page 2

Recommended Action:

Authorize the City Manager to execute and record a Notice of Use Limitation and any related and necessary documents upon certain terms and conditions required by the VDEQ and to take such further action and execute such other documents as may be necessary to obtain VDEQ approval for the closure plan for such property.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Darlene L. Burcham", written in a cursive style.

Darlene L. Burcham
City Manager

DLB:mpc

c: Mary F. Parker, City Clerk
William M. Hackworth, City Attorney
Jesse A. Hall, Director of Finance
Rolanda A. Johnson, Assistant City Manager
George C. Snead, Assistant City Manager
Maureen P. Castern, Acting Environmental Administrator

#CM02-00099

TAX MAP NO. 3070316

NOTICE OF USE LIMITATION

§ 10.6.B., VHWMR

9 VAC 20-60-264

Hazardous Waste Site Name: Middle Lot of Public Works Service Center – Unit No. 2

I.D. No: VAD 123725350

This Notice of Use Limitation ("Notice") is made as of the _____ day of _____, 2002, by the City of Roanoke, a Virginia municipal corporation ("Owner" or "Grantor" or "Grantee").

WITNESSETH:

WHEREAS, the City of Roanoke, Virginia, is the owner in fee simple of a certain parcel of real estate within the City of Roanoke, Virginia, with the buildings and improvements thereon, referred to as the Public Works Service Center, Tax Map No. 3070316, located at 1802 Courtland Road, N.E., Roanoke, Virginia 24012 (hereafter "the Property");

WHEREAS, a portion of the Property is more specifically subject to this Notice of Use Limitation. This portion of the Property is more particularly bounded and described as follows:

BEGINNING at an existing iron pin, said point being a corner to the lands of the City of Roanoke, Tax Parcel #3070316 and also being on the westerly property line of the property of Calvin W. & Mary C. Powers and Theodore J. & Judy P. Sutton; thence with said property line S 04°36'00" W 225.93 feet; to the southeasterly corner of the aforesaid City property and on the northerly line of the property of the City of Roanoke, Tax Parcel #3070501; thence with said properties S 83°35'00" W 269.00 feet; to the southerly corner of Tax Parcel #3070316, said point also being a corner to the property of Robert R. Young; thence with said Young's property line N 70°20'00" W 361.30 feet; to the southwesterly corner of Tax Parcel #3070316, said point also being the southeasterly corner of the property of the City of Roanoke, Tax Parcels #3070301 through #3070315; thence with said properties of the City of Roanoke N 23°02'00" W 295.10 feet; to the westerly corner of Tax Parcel #3070316; thence leaving the outside boundary of Tax Parcel #3070316 and with a tie line S 89°41'46" E 71.39 feet; to the True Point of Beginning having a Virginia South Zone State Plane Grid NAD 83 value of Northing: 3630555.32376, Easting: 11064693.01545, Elevation of 969.97 NGVD 29, said point being on the westerly line of the existing Unit No. 2 and also being N 78°23'46" W 683.71(Deed Meridian) N 79°05'59" W (Va. State Plane) feet from the Point of Beginning and ; thence with said Unit No. 2 in a clockwise direction the following thirty-four courses; thence N 09°05'37" E 9.05 feet; thence N 35°07'31" E 8.74 feet; thence N

49°56'35" E 7.45 feet; thence N 52°27'40" E 11.71 feet; thence N 54°06'23" E 14.60 feet; thence N 54°10'32" E 16.25 feet; thence N 47°28'23" E 17.54 feet; thence N 48°10'54" E 16.15 feet; thence N 64°11'55" E 9.17 feet; thence N 78°03'57" E 17.57 feet; thence N 88°36'10" E 14.82 feet; thence S 77°25'28" E 10.90 feet; thence S 60°12'23" E 8.44 feet; thence S 36°34'37" E 5.64 feet; thence S 11°04'10" E 7.58 feet; thence S 09°43'04" W 8.42 feet; thence S 20°48'53" W 14.57 feet; thence S 23°40'26" W 12.30 feet; thence S 25°30'57" W 13.24 feet; thence S 25°32'29" W 14.51 feet; thence S 23°26'21" W 14.00 feet; thence S 23°31'44" W 13.48 feet; thence S 37°04'37" W 10.16 feet; thence S 57°15'14" W 13.51 feet; thence S 72°09'09" W 17.01 feet; thence S 84°03'36" W 19.33 feet; thence N 89°54'36" W 11.90 feet; thence N 89°52'00" W 13.10 feet; thence S 84°14'14" W 15.05 feet; thence N 66°37'10" W 3.70 feet; thence N 16°02'49" W 3.28 feet; thence N 02°15'23" W 19.77 feet; thence N 04°48'02" W 16.69 feet; thence N 04°25'17" W 8.39 feet; to the True Point of BEGINNING and containing 0.260 acres as more particularly shown on survey entitled "Plat Showing Exhibit A-1 Unit No. 2" prepared by Lumsden Associates, P.C., dated 25 March 2002.

This parcel is further shown in a plat dated March 25, 2002, and marked as Exhibit A-1, attached hereto and made a part hereof and also recorded in Map Book 1, page ____, in the Office of the Clerk of the Circuit Court of the City of Roanoke. Such portion as shown on the plat is marked as Unit No. 2 and Exhibit A-1 will be recorded in the above Clerk's Office with this Notice and such portion will be referred to herein as Unit No. 2;

WHEREAS, Unit No. 2 comprises part of a disposal site as the result of a release of hazardous waste. Exhibit A-1 is a sketch Plan showing the relationship of Unit No. 2 subject to this Notice of Use Limitation to the boundaries of the property; and

WHEREAS, one or more response actions have been selected for Unit No. 2 in accordance with closure performance standards of § 10.6.B., of Virginia Hazardous Waste Management Regulations (VHWMR) and 9 VAC20-60-264. Such response actions are based upon (a) the restriction of human access to and contact with hazardous material in soil and/or (b) the restriction of certain activities occurring in, on, through, over or under Unit No. 2 .

NOW, THEREFORE, notice is hereby given that the use limitations for Unit No. 2 are set forth as follows:

1. Permitted Activities and Uses Set Forth in the Use Limitation. The use limitation provides that a condition of No Significant Risk to health, safety, public welfare or the environment (such condition being defined in the Closure Plan) exists for any foreseeable period of time so long as any of the following activities and uses and related work connected therewith occur on Unit No. 2:

- A. Construction, including grading, for a parking area for private and City owned vehicles;
- B. Construction of a stadium/amphitheater complex; and
- C. Such other uses, which in the opinion of an independent Registered Professional Engineer retained by the City, with the approval of the Virginia Department of Environmental Quality (VDEQ), shall present no greater risk of harm to health, safety, public welfare or the environment than the activities and uses set forth in this paragraph.

2. Uses Inconsistent with the Notification. Uses which are inconsistent with the notification, and which, if implemented at Unit No. 2, may result in a significant risk of harm to health, safety, public welfare or the environment, are as follows:

- A. Construction and occupancy of residential dwellings;
- B. Playgrounds for children;
- C. Childcare center; and
- D. Public garden space.

3. Obligations and Conditions Set Forth in the Notification. If applicable, obligations and/or conditions to be undertaken and/or maintained at Unit No. 2, other than as set forth in 1 above, to maintain a condition of No Significant Risk as set forth in the notification shall include the following:

- A. No construction in Unit No. 2 shall be undertaken without consultation with the Department of Environmental Quality;
- B. All soil removed from within the boundaries of Unit No. 2 shall be tested and treated as hazardous waste and disposed of as such if found to contain hazardous waste constituents; and
- C. All workers involved in disturbing soils from Unit No. 2 shall be properly trained and provided with proper personal protective equipment.

4. Proposed Changes in Uses. Any activities and uses at Unit No. 2 other than as set forth in 1 above, which may result in higher levels of exposure to hazardous material than currently exist shall be evaluated by a Registered Professional Engineer or Department of Environmental Quality representative, who shall render an opinion, in accordance with § 10.6. of VHWMR and 9 VAC20-60-264, as to whether the proposed changes will present a significant risk of harm to health, safety, public welfare or the environment. Any and all requirements set forth in the Notice to ensure a condition of No Significant Risk in the implementation of the proposed activity or use shall be satisfied before any such activity or use is commenced.

5. Violation of a Response Action Outcome. The activities, uses and/or exposures upon which this Notice is based shall not change at any time to cause a significant risk of harm to health, safety, public welfare, or the environment due to exposure to hazardous

material without the prior evaluation of DEQ, and without additional response actions, if necessary, to achieve or maintain a condition of No Significant Risk.

If the activities, uses, and/or exposures upon which this Notice is based change without the prior evaluation and additional response actions determined to be necessary by DEQ in accordance with § 10.6. of the VHWMR and 9 VAC 20-60- 264 the owner or operator of Unit No. 2 subject to this Notice at the time that the activities, uses and/or exposures change, shall comply with the requirements set forth in § 10.6. of VHWMR and 9 VAC 20-60-264.

6. Incorporation into Deeds, Mortgages, Leases, and Instruments of Transfer. This Notice shall be incorporated either in full or by reference into all deeds, easements, mortgages, leases, licenses, occupancy agreements or any other instrument of transfer, whereby an interest in and/or a right to use Unit No. 2 thereof is conveyed.

Owner hereby authorizes and consents to the filing and recordation and/or registration of this Notice to become effective when executed and sealed by the undersigned Professional Engineer, and recorded in the Office of the Clerk of the Circuit Court for the City of Roanoke.

WITNESS the execution hereof under seal this ____ day of _____, 2002.

ATTEST:

CITY OF ROANOKE, VIRGINIA

Mary F. Parker, City Clerk

By: _____
Darlene L. Burcham, City Manager

COMMONWEALTH OF VIRGINIA
CITY OF ROANOKE, to-wit:

The foregoing instrument was acknowledged before me this ____ day of _____, 2002, by Darlene L. Burcham, City Manager of the City of Roanoke, Virginia, on behalf of said municipal corporation.

My commission expires:

Notary Public

Approved as to Form:

Approved as to Execution:

City Attorney

City Attorney

The undersigned Professional Engineer hereby certifies that he/she executed the aforesaid Notice of Use Limitation and that in his/her Opinion this Notice of Use Limitation is consistent with the Department of Environmental Quality performance standards for restricted use of Unit No. 2, and §10.6., of VHWMR.

Date: _____, P.E.

[SEAL]

COMMONWEALTH OF VIRGINIA

_____ of _____, to-wit:

_____, then personally appeared and acknowledged the foregoing to be _____ free act and deed before me.

My commission expires: _____

Notary Public

IN THE COUNCIL OF THE CITY OF ROANOKE, VIRGINIA

AN ORDINANCE authorizing the City Manager to execute a Notice of Use Limitation and any related and necessary documents regarding a portion of City owned property located at 1802 Courtland Road, N.E., containing approximately 0.260 acres, and being a portion of Official Tax Map No. 3070316, upon certain terms and conditions; and providing for an emergency.

BE IT ORDAINED by the Council of the City of Roanoke as follows:

1. The City Manager and the City Clerk are authorized to execute and attest, respectively, a Notice of Use Limitation and any related and necessary documents, in a form approved by the City Attorney, providing for a limitation on the use of a small portion of certain City owned property located at 1802 Courtland Road, N.E., containing approximately 0.260 acres, and being a portion of Official Tax Map No. 3070316, upon certain terms and conditions as may be required by the Virginia Department of Environmental Quality (VDEQ) and as set forth in the City Manager's Letter to Council dated May 20, 2002.
2. The City Manager is further authorized to take such further action, to include the recording of documents, and execute such other documents as may be necessary to obtain VDEQ approval for the closure plan for such property.
3. In order to provide for the usual daily operation of the municipal government, an emergency is deemed to exist, and this ordinance shall be in full force and effect upon its passage.

ATTEST:

City Clerk.



May 20, 2002

Honorable Ralph K. Smith, Mayor
Honorable William H. Carder, Vice Mayor
Honorable William D. Bestpitch, Council Member
Honorable C. Nelson Harris, Council Member
Honorable W. Alvin Hudson, Jr., Council Member
Honorable William White, Sr., Council Member
Honorable Linda F. Wyatt, Council Member

Dear Mayor Smith and Members of City Council:

Subject: Late Payment Penalty for
Decal Violations

Background:

On May 13th, 2002, City Council approved an increase in the late payment penalty for certain parking tickets from \$10 to \$15. The late payment penalty is added to violations paid 10 days or more after issuance of the notice of violation. The Department of Billings and Collections recommended the increase from \$10 to \$15 for all late payment penalties. A late payment penalty is also charged for late payments of decal violations. The current fee for decal violations is \$43 with a fee of \$53 imposed if payment is not made within ten days of the issuance of notice of violation.

Considerations:

The late payment penalties should be consistent for all late payments. After further review, it was noted that the decal violation late payment penalty had not been increased from \$10 to \$15. To make the late payment penalties consistent, the decal violation fee would be \$58 rather than \$53 if payment is not made within ten days.

Recommended Action:

City Council approve the attached ordinances amending City Code section 30-33.1 to reflect the changes in the late payment penalty as referenced above.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Darlene L. Burcham". The signature is fluid and cursive, with a large initial "D".

Darlene L. Burcham
City Manager

DLB:afs

c: Mary F. Parker, City Clerk
William M. Hackworth, City Attorney
Jesse A. Hall, Director of Finance

CM02-00105

IN THE COUNCIL OF THE CITY OF ROANOKE, VIRGINIA,

AN ORDINANCE amending and reordaining subsection (e) of §20-33.1, Same-Requirements; obtaining license plate, tag or decal a condition precedent to discharge of violation, of Code of the City of Roanoke (1979), as amended, the amended section to provide for the increase of certain penalties for decal violations within the City of Roanoke; and providing an emergency and for an effective date.

BE IT ORDAINED by the Council of the City of Roanoke that:

1. The Code of the City of Roanoke (1979), as amended, is hereby amended and reordained by amending the following sections:

§20-33.1. Same-Requirements; obtaining license plate, tag or decal a condition precedent to discharge of violation

* * *

- (e) If this penalty is not paid within ten (10) days of the issuance by an officer of a notice of violation, a notice pursuant to section 46.2-941, Code of Virginia (1950), as amended, shall be sent by the city's office of billings and collections to the violator. Any violator to whom such a notice is sent may pay such penalty of fifty-eight dollars (\$58.00) and present satisfactory evidence that the required license plate, tag or decal has been obtained within five (5) days of receipt of such notice. The city treasurer shall not accept payment of this penalty except upon presentation of satisfactory evidence that the required decal has been obtained. The city treasurer shall not be authorized to accept partial payment of the penalty due.

* * *

2. The Fee Compendium of the City maintained by the Director of Finance and authorized and approved by the City Council by Resolution No. 32412-032795, adopted March 27, 1995, effective as of that date, shall be amended to reflect the new fines to be charged for the aforesaid violations.

3. In order to provide for the usual daily operation of the municipal government, an emergency is deemed to exist and this ordinance shall be in full force and effect as of July 1, 2002.

ATTEST:

City Clerk.



Sherman P. Lea, Chairman
Ruth C. Willson, Vice Chairman
Charles W. Day

Marsha W. Ellison
Gloria P. Manns
Melinda J. Payne

7.a.
Brian J. Wishneff
E. Wayne Harris, Ed.D., Superintendent
Cindy H. Lee, Clerk of the Board

Roanoke
City School Board P.O. Box 13145, Roanoke, Virginia 24031 • 540-853-2381 • Fax: 540-853-2951

May 20, 2002

The Honorable Ralph K. Smith, Mayor
and Members of Roanoke City Council
Roanoke, VA 24011

Dear Members of Council:

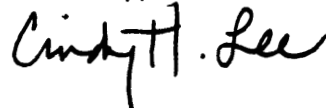
As the result of official School Board action at its May 14 meeting, the Board respectfully requests City Council to approve the following appropriations:

- \$752,295.00 from the Capital Maintenance and Equipment Replacement Fund. The monies will be used for the replacement of obsolete instructional technology equipment, Magnet School technology equipment, the replacement of school buses, the replacement of facility maintenance equipment, the replacement of School Plants vehicles, the construction of the Blue Ridge Technical Academy Bio-Medical laboratory, and the replacement of food services equipment at various schools.
- \$199,191.00 for the Fleming-Ruffner Community Learning Center. The Center will address the critical attendance, academic, and parental involvement needs of the community in a safe, supervised, and nurturing environment. This continuing program will be one hundred percent reimbursed by federal funds.
- \$5,400.00 for the Statewide Compulsory Attendance Law Workshop. This new grant is funded with federal funds.
- \$6,395,000.00 for improvements to Roanoke Academy for Mathematics and Science. The improvements are funded with 1999 Bond funds, a Literary Fund loan, and City capital funds.
- \$1,276,260.00 for improvements to Roanoke Academy for Mathematics and Science. Funding is being provided by Qualified Zone Academy Bond (QZAB) funds and will be used to purchase furniture and equipment for the facility.
- \$163,671.00 for the Title I Summer program to provide remedial reading, language arts and mathematics instruction for students in targeted schools. This continuing program will be one hundred percent reimbursed by federal funds.

- \$7,700.00 for the Roanoke Adolescent Health Partnership to provide for medical services to the Schools in conjunction with the City of Roanoke Health Department and Carilion Health Systems. This continuing program will be reimbursed by donations from Carilion Health Services and various grants.
- \$90,000.00 for the Juvenile Detention Home program to provide funds for the salary and expenses of the six educational coordinators and the principal position. This continuing program will be one hundred percent reimbursed by State funds.
- \$35,671.00 for the Adult Basic Education program to provide funds for the education of adults who have not completed high school. This continuing program will be reimbursed by federal funds. Matching funds have been provided in the amount of \$22,700.00.
- \$4,000.00 for the Regional Education Specialist program to provide ancillary and support services for the Adult Literacy and Basic Education program in the planning district. This continuing program is funded with member fees.
- \$40,639.00 for the Regional Adult Literacy program to provide funds for the administration of adult literacy programs. This continuing program is funded with federal funds.
- \$16,647.00 for the Regional Adult Basic Education program to provide funds for the administration of adult literacy programs. This continuing program is funded with federal funds.

The Board appreciates the approval of this request.

Sincerely,



Cindy H. Lee, Clerk

re

cc: Mr. Sherman P. Lea
Dr. E. Wayne Harris
Mr. Richard L. Kelley
Mr. Kenneth F. Mundy
Mr. William L. Murray

Mrs. Darlene Burcham
Mr. William M. Hackworth
Mr. Jesse A. Hall
Mrs. Ann H. Shawver (with accounting details)

**CITY OF ROANOKE
DEPARTMENT OF FINANCE**

215 Church Avenue, S.W. Room 461

P.O. Box 1220

Roanoke, VA 24006-1220

Telephone: (540) 853-2821

Fax: (540) 853-6142

May 20, 2002

The Honorable Ralph K. Smith, Mayor
The Honorable William H. Carder, Vice Mayor
The Honorable William D. Bestpitch, Council Member
The Honorable C. Nelson Harris, Council Member
The Honorable W. Alvin Hudson, Jr., Council Member
The Honorable William White, Sr., Council Member
The Honorable Linda F. Wyatt, Council Member

Dear Mayor Smith and Members of City Council:

We have reviewed the attached request from the School Board to appropriate the following:

\$752,295.00 from the Capital Maintenance and Equipment Replacement Program funding will be used for the replacement of obsolete instructional technology equipment, Magnet School technology equipment, the replacement of school buses, the replacement of facility maintenance equipment, the replacement of School Plants vehicles, the construction of the Blue Ridge Technical Academy Bio-Medical laboratory, and the replacement of food services equipment at various schools.

\$199,191.00 for the Fleming-Ruffner Community Learning Center. The Center will address the critical attendance, academic, and parental involvement needs of the community in a safe, supervised, and nurturing environment. This continuing program will be one hundred percent reimbursed by federal funds.

\$5,400.00 for the Statewide Compulsory Attendance Law Workshop. This new grant is funded with federal funds.

\$163,671.00 for the Title I Summer program to provide remedial reading, language arts and mathematics instruction for students in targeted schools. This continuing program will be one hundred percent reimbursed by federal funds.

\$7,700.00 for the Roanoke Adolescent Health Partnership to provide for medical services to the Schools in conjunction with the City of Roanoke Health Department and Carilion Health Systems. This continuing program will be reimbursed by donations from Carilion Health Services and various grants.

\$90,000.00 for the Juvenile Detention Home program to provide funds for the salary and expenses of the six educational coordinators and the principal position. This continuing program will be one hundred percent reimbursed by State funds.

Members of Council
Page 2
May 20, 2002

\$35,671.00 for the Adult Basic Education program to provide funds for the education of adults who have not completed high school. This continuing program will be reimbursed by federal funds. Matching funds have been provided in the amount of \$22,700.00.

\$4,000.00 for the Regional Education Specialist program to provide ancillary and support services for the Adult Literacy and Basic Education program in the planning district. This continuing program is funded with member fees.

\$40,639.00 for the Regional Adult Literacy program to provide funds for the administration of adult literacy programs. This continuing program is funded with federal funds.

\$16,647.00 for the Regional Adult Basic Education program to provide funds for the administration of adult literacy programs. This continuing program is funded with federal funds.

We recommend that you concur with this request of the School Board.

Sincerely,

Jesse A. Hall
AHS

Jesse A. Hall
Director of Finance

JAH/s

Attachment

c: Darlene L. Burcham, City Manager
William M. Hackworth, City Attorney
Mary F. Parker, City Clerk
E. Wayne Harris, Superintendent of City Schools

IN THE COUNCIL OF THE CITY OF ROANOKE, VIRGINIA

AN ORDINANCE to amend and reordain certain sections of the 2001-2002 General, School, and School Food Services Funds Appropriations, and providing for an emergency.

WHEREAS, for the usual daily operation of the Municipal Government of the City of Roanoke, an emergency is declared to exist.

THEREFORE, BE IT ORDAINED by the Council of the City of Roanoke that certain sections of the 2001-2002 General, School, and School Food Service Funds Appropriations, be, and the same are hereby, amended and reordained to read as follows, in part:

General Fund

Appropriations

Nondepartmental	\$ 72,358,399
Transfer to School Fund (1)	46,697,617

Fund Balance

Reserved for CMERP - Schools (2)	\$ -0-
--------------------------------------------	--------

School Fund

Appropriations

Education	\$ 131,812,622
Title I Summer (3-11)	163,671
Fleming Ruffner Community Learning Center (12-22)	199,191
Juvenile Detention Home 2001-02 (23-27)	312,391
Regional Adult Education Specialist 2001-02 (28)	4,000
Adult Basic Education 2001-02 (29-30)	199,275
Regional Adult Literacy TAP 2002 (31)	190,737

Regional ABE 2001-02 (32-33)	\$ 51,869
Statewide Compulsatory (34-35)	5,400
Adolescent Health Partnership 2001-02 (36-37)	166,771
Facilities (38-43)	2,314,105

Revenues

Education	\$ 128,997,480
Title I Summer (44)	163,671
Fleming Ruffner Community Learning Center (45)	199,191
Juvenile Detention Home 2001-02 (46)	312,391
Regional Adult Education Specialist 2001-02 (47)	4,000
Adult Basic Education 2001-02 (48)	199,275
Regional Adult Literacy TAP 2002 (49)	190,737
Regional ABE 2001-02 (50)	51,869
Statewide Compulsatory (51)	5,400
Adolescent Health Partnership 2001-02 (52)	166,771
Nonoperating	\$ 46,897,617
Transfer from General Fund (53)	46,697,617

School Food Services Fund

Appropriations

Education	\$ 4,632,227
Facilities (54)	86,218

Fund Balance

Fund Balance - Unappropriated (55)	\$ -0-
----------------------------------------------	--------

1) Transfer to		
School Fund	(001-250-9310-9530)	\$ 683,055
2) Reserved for		
CMERP - Schools	(001-3324)	(683,055)
3) Comp of Elementary		
Teachers	(030-062-6193-6449-0121)	76,189
4) Comp of Guidance		
Counselors	(030-062-6193-6449-0123)	11,890
5) Teacher Aides	(030-062-6193-6449-0141)	6,704
6) Social Security	(030-062-6193-6449-0201)	7,251
7) Indirect Costs	(030-062-6193-6449-0212)	37,718
8) Field Trips	(030-062-6193-6449-0583)	3,000
9) Educ & Recreational		
Supplies	(030-062-6193-6449-0614)	3,000

10) Comp of Nurses	(030-062-6193-6549-0131)	\$ 16,646
11) Social Security	(030-062-6193-6549-0201)	1,273
12) Comp of Teachers	(030-062-6328-6100-0121)	40,800
13) Comp of Teacher Aides	(030-062-6328-6100-0141)	82,607
14) Social Security	(030-062-6328-6100-0201)	15,013
15) State Retirement	(030-062-6328-6100-0202)	4,047
16) Health Insurance	(030-062-6328-6100-0204)	3,690
17) State Group Life Insurance	(030-062-6328-6100-0205)	326
18) Indirect Costs	(030-062-6328-6100-0212)	3,115
19) Contracted Services	(030-062-6328-6100-0313)	23,023
20) Tuition - In State	(030-062-6328-6100-0382)	5,565
21) Conventions/ Education	(030-062-6328-6100-0554)	2,005
22) Educ & Recreational Supplies	(030-062-6328-6100-0614)	19,000
23) Comp of Principals	(030-062-6574-6554-0126)	64,805
24) Comp of Other Professionals	(030-062-6574-6554-0138)	11,407
25) Social Security	(030-062-6574-6554-0201)	4,958
26) State Retirement	(030-062-6574-6554-0202)	5,503
27) Health Insurance	(030-062-6574-6554-0204)	3,327
28) Contracted Services	(030-062-6730-6343-0332)	4,000
29) Comp of Teachers	(030-062-6739-6450-0121)	33,136
30) Social Security	(030-062-6739-6450-0201)	2,535
31) Contracted Services	(030-062-6744-6550-0313)	40,639
32) Other Professional Services	(030-062-6747-6451-0313)	14,962
33) Other Professional Services	(030-062-6747-6451-0313)	1,685
34) Contracted Services	(030-063-6838-6315-0332)	1,500
35) Educ & Recreational Supplies	(030-063-6838-6315-0614)	3,900
36) Comp of Nurses	(030-064-6827-6672-0131)	7,153
37) Social Security	(030-064-6827-6672-0201)	547
38) ADDT - Machinery and Equipment	(030-060-6006-6681-0821)	10,000
39) ADDT - Machinery & Equipment	(030-065-6006-6307-0821)	48,000
40) REPL - Machinery & Equipment	(030-065-6006-6318-0801)	250,000
41) Replacement of School Buses	(030-065-6006-6676-0808)	95,555

42) ADDT - Motor Vehicle & Equipment	(030-065-6006-6682-0824)	\$ 39,500
43) Buildings	(030-065-6006-6896-0851)	240,000
44) Federal Grant Receipts	(030-062-6193-1102)	163,671
45) Federal Grant Receipts	(030-062-6328-1102)	199,191
46) State Grant Receipts	(030-062-6574-1100)	90,000
47) Fees	(030-062-6743-1103)	4,000
48) Federal Grant Receipts	(030-062-6739-1102)	35,671
49) Federal Grant Receipts	(030-062-6744-1102)	40,639
50) Federal Grant Receipts	(030-062-6747-1102)	16,647
51) Federal Grant Receipts	(030-063-6838-1102)	5,400
52) Fees	(030-060-6827-1103)	7,700
53) Transfer from General Fund	(030-060-6000-1037)	683,055
54) ADDT - Machinery & Equipment	(032-065-6006-6788-0821)	69,240
55) Fund Balance - Unappropriated	(032-3325)	(69,240)

BE IT FURTHER ORDAINED that, an emergency existing, this Ordinance shall be in effect from its passage.

ATTEST:

City Clerk.

Office of the City Manager

May 20, 2002

Honorable Ralph K. Smith, Mayor, and Members of City Council
Roanoke, Virginia

Dear Mayor Smith and Members of Council:

Subject: Amendment to Comprehensive
Plan to include Outlook Roanoke
Plan

The above referenced matter was heard on February 19, 2002, and tabled. I would like to request that this matter be brought back before Council at its regular meeting on Monday, May 20, 2002.

Respectfully submitted,

Darlene L. Burcham
City Manager

c: City Attorney
Director of Finance
City Clerk



February 19, 2002

Honorable Ralph K. Smith, Mayor
Honorable William H. Carder, Vice Mayor
Honorable William D. Bestpitch, Council Member
Honorable C. Nelson Harris, Council Member
Honorable W. Alvin Hudson, Council Member
Honorable William White, Sr., Council Member
Honorable Linda F. Wyatt, Council Member

Dear Mayor Smith and Members of City Council:

Subject: Adoption of *Outlook Roanoke Update* as the downtown element of
the *Vision 2001-2020 Comprehensive Plan*

Planning Commission Action:

On January 23, 2002, the Planning Commission held a public hearing on the above plan. Several persons spoke in favor of the adoption; no one spoke in opposition to the plan. Subsequently, by a vote of 6-0 (Messrs. Butler, Campbell, Chrisman, Hill, Manetta and Rife voting in favor; Mr. Dowe absent), the Planning Commission adopted a resolution recommending amendment of *Vision 2001-2020*, the City's adopted comprehensive plan, to include *Outlook Roanoke Update*, as an element of the plan.

Background

In 1997, the City of Roanoke, Downtown Roanoke, Inc., and the Roanoke Redevelopment and Housing Authority collaborated to develop *Outlook Roanoke*, a plan for downtown Roanoke. Several initiatives identified in *Outlook Roanoke* have been realized (e.g., the Higher Education Center, the rail walk, and the improvements on Williamson Road and the Second Street Bridge).

Over the past couple of years, downtown has experienced several development projects, and more are planned. Some of these projects included establishment of the South Jefferson Redevelopment Area, pursuance of an IMAX theatre, improvements to Roanoke Passenger Station for the arts, potential development adjacent to Jefferson Center, improvements to the Main Library, construction of the Linear Rail Walk, improvements to Henry Street, and completion of a Higher Education Center. In addition, two key planning activities influenced downtown: *Vision 2001-2020 Comprehensive Plan* and neighborhood plans for neighborhoods adjacent to the downtown (e.g., Gainsboro, Old Southwest, Belmont/Fallon). The need to coordinate

these projects and plans resulted in the development of the *Outlook Roanoke Update* (downtown plan).

In August 2000, Urban Design Associates (UDA), an architecture and planning firm, was hired by Downtown Roanoke Inc. to facilitate a planning process and prepare an update for downtown development. UDA sub-contracted with Hill Studio, P.C., Nottingham and Associates, Inc., and Zimmerman/Volk Associates, Inc. to prepare the plan.

A steering committee consisting of citizens, downtown business persons, neighborhood leaders and City staff was created to oversee the development of the downtown plan. Several sub-committees were also created to address specific issues regarding the downtown area (e.g., housing, parking and transportation, technology, entertainment, the Main Library and the Jefferson Center).

In November 2000, neighborhood meetings also were held in Old Southwest, Belmont/Fallon and Gainsboro to discuss coordination between the downtown plan and the neighborhood plans.

In February 2001, a public meeting was held at the Higher Education Center to discuss downtown issues. The results of that meeting are summarized in the section of the downtown plan entitled, *Planning Process: Good Things/Bad Things*.

In September 2001, a joint meeting of the Planning Commission and the City Council was held to present the recommendations of the *Outlook Roanoke Update* and provide opportunities for further discussion.

Considerations

The purpose of the downtown plan is to provide a framework for prioritizing and coordinating the development projects and planning activities in the downtown area. The plan identified several priorities that are categorized into five initiative areas and opportunities:

1. Elmwood Park Initiative (park enhancement, library alternatives, new development opportunities)
2. Church Avenue Initiative (Jefferson & Church development opportunities, Williamson & Church development opportunities, Church Avenue development opportunities)
3. E-Town Initiative (Warehouse Row, Campbell Avenue, and other development opportunities)
4. Market Initiative (City Market area development opportunities)
5. Jefferson Center Initiative (Jefferson Center area development opportunities)

The plan recommends implementation of these development initiatives when two or more individual components are ready to move forward.

The plan also identifies market strategies for economic development, residential development and retail/entertainment.

1. The economic development strategy recommends marketing the variety of amenities in the downtown.
2. The residential strategy recommends the targeting of market-rate housing in the downtown through adaptive re-use of existing buildings and new construction.
3. The retail/entertainment strategy encourages the expansion of specialty retail and dining opportunities.

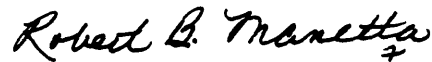
The downtown plan further recommends infrastructure and traffic improvements designed to encourage connectivity within the downtown and beyond to adjacent neighborhoods as well as the region (e.g., greenways).

Vision 2001-2020 Comprehensive Plan recommends that the City adopt neighborhood plans for all neighborhoods. The downtown is considered one of the City's neighborhoods.

Recommendation:

The Planning Commission recommends that City Council amend *Vision 2001-2020*, the City's adopted comprehensive plan, to include *Outlook Roanoke Update*, as an element of that plan.

Respectfully submitted,



Robert B. Manetta, Chairman
City of Roanoke Planning Commission

cc: Darlene L. Burcham, City Manager
Rolanda Johnson, Assistant City Manager for Community Development
William M. Hackworth, City Attorney
Steven J. Talevi, Assistant City Attorney

7
1/23/02

IN THE PLANNING COMMISSION FOR THE
CITY OF ROANOKE, VIRGINIA,

A RESOLUTION recommending amendment of Vision 2001-2020, the City's adopted comprehensive plan, to include Outlook Roanoke Update.

WHEREAS, in 1997, the City of Roanoke, Downtown Roanoke, Inc., and the Roanoke Development and Housing Authority collaborated to develop Outlook Roanoke, a development plan for downtown Roanoke;

WHEREAS, in the last several years, downtown Roanoke has experienced several development projects, and more are planned;

WHEREAS, the City of Roanoke has recently adopted Vision 2001-2020, the City's comprehensive plan, and neighborhood plans for neighborhoods adjacent to downtown Roanoke;

WHEREAS, the future development projects and the various plans relating to the neighborhoods in the vicinity of downtown Roanoke need to be coordinated for the appropriate development and growth of the City of Roanoke;

WHEREAS, Downtown Roanoke, Inc., retained an architectural and planning firm to develop Outlook Roanoke Update, an updated development plan for downtown Roanoke;

WHEREAS, Outlook Roanoke Update resulted from the efforts of a committee and subcommittee, consisting of downtown business persons, neighborhood leaders and City Staff;

WHEREAS, Outlook Roanoke Update recommends that certain infrastructure changes be made which are designed to encourage an easier flow of traffic within the downtown area and between downtown and adjacent neighborhoods and other areas; and

WHEREAS, this Commission finds that Vision 2001-2020, the City's adopted comprehensive plan, should be amended to include Outlook Roanoke Update.

NOW, THEREFORE, BE IT RESOLVED by the Planning Commission for the City of Roanoke that the Planning Commission recommends that City Council amend Vision 2001-2020, the City's adopted comprehensive plan, to include Outlook Roanoke Update as an element thereof.

Adopted this 23rd day of January, 2002.

ATTEST:

By Martha P. Franklin
Secretary, Roanoke City Planning Commission



Downtown Roanoke Inc.

213 Market Street • Roanoke, VA 24011 • 540-342-2028 • FAX 344-1452
www.downtownroanoke.org • e-mail: dri@downtownroanoke.org

May 15, 2002

EXECUTIVE COMMITTEE

DON J. HARRISON
First Union National Bank
Chair

M. HELEN BUTLER
Carlton Health Systems
Chair-Elect

MARYELLEN F. GOODLATTE
Glenn Feldmann Darby & Goodlatte
Immediate Past-Chair

MICHAEL E. WARNER
N & W Properties
Secretary

STEPHEN W. LEMON
Martin Hopkins & Lemon, PC
Treasurer & Vice-Chair

MICHAEL T. DITTRICH
Pepsi Bottling Company
Vice-Chair

G. LOGAN FORSYTH
Chas. Lunford Sons & Associates
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Building Specialists, Inc.
Vice-Chair

SABRENE BLEVINS
Creative Ink Promotions
At-Large

VICTOR O. CARDWELL
Woods Rogers & Hazlegrove
At-Large

R. MATTHEW KENNEL
President

DIRECTORS

ROBERT K. BENGTSON
City of Roanoke

MICHAEL J. BRUNETTE
NewsChannel 10 (WLSL-TV)

CYNTHIA S. CASSELL
Twist & Turns

DR. DENNIS FISHER
Carlton Bio-Medical Institute

ELLIS L. GUTSHALL
Valley Bank

TERRY HALL
American Electric Power

BONZ HART
Meridium, Inc.

JAMES N. HINSON
First Virginia Bank-Southwest

CAROLE J. HUGHES
La De Da, Inc.

F. GEOFFREY JENNINGS
Frank L. Moore Jeweler

SUSAN W. JENNINGS
The Arts Council of the Blue Ridge

F. ALLAN POLLARD, II
Corned Beef & Company

KENNETH RATTENBURY
Fret Mill Music Company

MICHAEL R. RIELEY
Verizon

MANJIT S. TOOR
Shieritz Franklin Crawford Shaffner, Inc.

DENNIS TRAUBERT
First Citizens Bank

WILLIAM F. TRINKLE
Francis Realtors

GARY D. WALTON
Hotel Roanoke & Conference Center

MARK W. WOODS
Woods Farms

WILLIAM H. CORDER
Roanoke City Council Liaison

Members of Roanoke City Council
Noel C. Taylor Municipal Building
City Clerk's Office
215 Church Avenue
Roanoke, VA 24011

Dear City Council:

On behalf of Downtown Roanoke Incorporated (DRI), I strongly support City Council's adoption of the Outlook Roanoke Update, dated September 2001.

As you recall, the City Planning Commission voted unanimously in favor of the Outlook Update earlier this year. The DRI Board mailed a letter to the Planning Commission expressing its support of the Outlook Update on January 11, 2002 (see attached letter).

On May 14, 2002, the DRI Board met and voted on the plan once again to reaffirm its support of the plan. The Board's vote was unanimous in its support for recommending to Council to vote in favor of adoption of the plan.

I look forward to working with the City as a partner in implementing this plan, which I feel sets forth a bold and exciting vision for the future of Roanoke's Downtown.

Please call me at 342-2028 if you have any questions.

Sincerely,

David A. Diaz
President

cc: Darlene Burcham, City Manager
Don Harrison, Chairman



Downtown Roanoke Inc.

213 Market Street • Roanoke, VA 24011 • 540-342-2028 • FAX 344-1452
www.downtownroanoke.org • e-mail: dri@downtownroanoke.org

P. 2

EXECUTIVE COMMITTEE

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Hotel Roanoke & Conference Center

MARK W. WOODS
Woods Farms

WILLIAM H. CORDER
Roanoke City Council Liaison

January 11, 2002

Members of Roanoke City Planning Commission
Noel C. Taylor Municipal Building
215 Church Avenue
Roanoke, VA 24011

Dear Commission Members:

I am writing as directed by the Board of Directors of Downtown Roanoke Inc. to inform you that our organization supports the initiatives outlined in the final draft of the *Outlook Roanoke Update* dated September 2001.

The *Outlook Roanoke Update* outlines five key initiative areas and opportunities: (1) Elmwood Park Initiative, (2) Church Avenue Initiative, (3) E-Town Initiative, (4) Jefferson Center Initiative and (5) The Market Initiative. These key initiatives are extremely important in the continued effort to develop and revitalize Downtown Roanoke. It is an exciting time as we see signs of progress on both the northern and southern borders of downtown and, we believe it is critical to keep the momentum going with a planned strategy as proposed in the new *Outlook Roanoke Update*.

Thank you for your diligent support of the City of Roanoke and a vibrant downtown Roanoke.

Sincerely,

Judy H. Evans
Interim President

cc: Don Harrison, Chairman



SJT
5/15/02

IN THE COUNCIL OF THE CITY OF ROANOKE, VIRGINIA,

A RESOLUTION amending Vision 2001-2020, the City's adopted comprehensive plan, to include Outlook Roanoke Update as an element of the comprehensive plan.

WHEREAS, in 1997, the City of Roanoke, Downtown Roanoke, Inc., and the Roanoke Development and Housing Authority collaborated to develop Outlook Roanoke, a development plan for downtown Roanoke;

WHEREAS, in the last several years, downtown Roanoke has experienced several development projects, and more are planned;

WHEREAS, the City of Roanoke has recently adopted Vision 2001-2020, the City's comprehensive plan, and neighborhood plans for neighborhoods adjacent to downtown Roanoke;

WHEREAS, the future development projects and the various plans relating to the neighborhoods in the vicinity of downtown Roanoke need to be coordinated for the appropriate development and growth of the City of Roanoke;

WHEREAS, Downtown Roanoke, Inc., retained an architectural and planning firm to develop Outlook Roanoke Update, an updated development plan for downtown Roanoke;

WHEREAS, Outlook Roanoke Update resulted from the efforts of a committee and subcommittee, consisting of downtown business persons, neighborhood leaders and City Staff; and

WHEREAS, Outlook Roanoke Update recommends that certain infrastructure changes be made which are designed to encourage an easier flow of traffic within the downtown area and between downtown and adjacent neighborhoods and other areas; and

WHEREAS, the Planning Commission has recommended, after public notice and public hearing, that Vision 2001-2020, the City's adopted comprehensive plan, be amended to include Outlook Roanoke Update as an element thereof;

NOW, THEREFORE, BE IT RESOLVED by the Council for the City of Roanoke that Vision 2001-2020, the City's adopted comprehensive plan, be amended to include Outlook Roanoke Update as an element thereof.

ATTEST:

City Clerk.

IN THE COUNCIL OF THE CITY OF ROANOKE, VIRGINIA,

55
4/16/02

AN ORDINANCE to amend §36.1-3, Code of the City of Roanoke (1979), as amended, and Sheet No. 276, Sectional 1976 Zone Map, City of Roanoke, in order to amend, repeal or replace certain proffered conditions, accepted by City Council by Ordinance No. 32294-121994, presently binding upon Official Tax No. 2761409, and rezoning such Official Tax No. 2761409, from RS-3, Residential Single Family, Low Density District, and C-2, General Commercial District, to C-2, General Commercial District, subject to certain conditions proffered by the applicant; and rezoning Official Tax No. 2761421 from RS-3, Residential Single Family, Low Density District, to C-2, General Commercial District, subject to certain conditions proffered by the applicant.

WHEREAS, Mr. Michael A. Wells, has made application to the Council of the City of Roanoke to amend, repeal or replace proffered conditions, accepted by City Council by Ordinance No. 32294-121994, presently binding upon Official Tax No. 2761409, and rezoning such Official Tax No. 2761409, from RS-3, Residential Single Family, Low Density District, and C-2, General Commercial District, to C-2, General Commercial District, subject to certain conditions proffered by the applicant, and rezoning Official Tax No. 2761421 from RS-3, Residential Single Family, Low Density District, to C-2, General Commercial District, subject to certain conditions proffered by the applicant; and

WHEREAS, the City Planning Commission, after giving proper notice to all concerned as required by §36.1-693, Code of the City of Roanoke (1979), as amended, and after conducting a public hearing on the matter, has made its recommendation to Council; and

WHEREAS, a public hearing was held by City Council on said application at its meeting on

April 15, 2002, after due and timely notice thereof as required by §36.1-693, Code of the City of Roanoke (1979), as amended, at which hearing all parties in interest and citizens were given an opportunity to be heard, both for and against the proposed rezoning; and

WHEREAS, this Council, after considering the aforesaid combined application, the recommendations made to the Council by the Planning Commission, the City's Comprehensive Plan, and the matters presented at the public hearing, is of the opinion that the proffered conditions now binding upon the parcel of land designated as Official Tax No. 2761409, should be amended and replaced and that Ordinance No. 32294-121994, accepting said proffered conditions, should be repealed to the extent that it rezones the subject property and accepts and places such proffered conditions on said property; and

WHEREAS, this Council, after considering the aforesaid combined application, the recommendation made to the Council by the Planning Commission, the City's Comprehensive Plan, and the matters presented at the public hearing, is of the opinion that the hereinafter described property should be rezoned as herein provided.

THEREFORE, BE IT ORDAINED by the Council of the City of Roanoke that §§36.1-3 and 36.1-4, Code of the City of Roanoke (1979), as amended, and Sheet No. 276 of the Sectional 1976 Zone Map, City of Roanoke, be amended in the following particular and no other:

That the conditions now binding upon the parcel of land designated as Official Tax No. 2761409, be amended and replaced and that Ordinance No. 32294-121994, accepting said conditions, be repealed to the extent that it rezones the subject property and accepts and places such conditions on said property; that certain tract of land described as Official Tax No. 2761409, designated on Sheet No. 276 of the Sectional 1976 Zone Map, City of Roanoke, be, and is hereby

rezoned from RS-3, Single Family Residential District, to C-2, General Commercial District, subject to the proffers accepted by City Council in Ordinance No. 32294-121994, to C-2, General Commercial District, subject to the proffers contained in the Amended Petition filed in the Office of the City Clerk on April 8, 2002; and that tract of land designated as Official Tax No. 2761421, be, and is hereby, rezoned from RS-3, Single Family Residential District, to C-2, General Commercial District, subject to the proffers contained in the Amended Petition filed in the Office of the City Clerk on April 8, 2002; and that Sheet No. 276 of the Zone Map be amended to reflect the changes in the proffered conditions and rezoning of the subject parcels, as set forth in the report of the Planning Commission dated April 15, 2002.

ATTEST:

City Clerk.



May 20, 2002

Honorable Ralph K. Smith, Mayor
Honorable William H. Carder, Vice Mayor
Honorable William D. Bestpitch, Council Member
Honorable C. Nelson Harris, Council Member
Honorable W. Alvin Hudson, Jr., Council Member
Honorable William White, Sr., Council Member
Honorable Linda F. Wyatt, Council Member

Dear Mayor Smith and Members of City Council:

Subject: Leasing portion of East
 Gate Park

Background:

East Gate Park, located on North Avenue, N. E. between 13th Street and Tinker Creek is approximately fifty-nine acres. Park amenities include a playground, shelter with restroom and one-half basketball court. Parks and Recreation's Comprehensive Master Plan does not identify any additional public investment in this park because of the challenges of locating recreational facilities on a landfill; i.e., athletic fields cannot be installed due to lighting requirements which would require disturbing the landfill.

The Scott Robertson Memorial Fund is a charitable organization that has conducted annual junior golf tournaments, summer golf camps and scholarships to area youth. Now this Fund, a 501(c)3 organization, is ready to embark on a project that will introduce golf and mentoring opportunities to youth, while creating a public golf facility. To accomplish this, the Fund is working with the First Tee which is a 501(c)3 corporation that helps create affordable and accessible golf facilities through it's local chapters. This Fund, a local chapter, has requested a 15-year Lease (Attachment A) of an approximately twenty-nine acre portion of East Gate Park to implement a First Tee Golf Program. This is precisely the type of symbiotic partnership identified in the goals of the Parks and Recreation Master Plan. This partnership will provide recreational opportunities, which are not currently offered, to a wide spectrum of Roanoke citizens of all ages. The main objective of the First Tee Program is to provide youth with a

learning opportunity, delivered with integrity, honesty, confidence, and responsibility.

Considerations:

East Gate Park is ideally suited for this endeavor. The existing park amenities and thirty acres of the Park will remain after leasing and will continue to serve the neighbors and visitors as a neighborhood park, for recreational opportunities outside of golf.

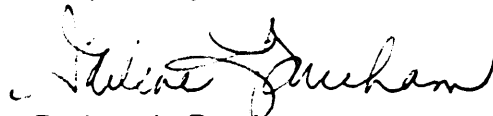
This effort will be the City's first in the re-development of a known landfill. Because of this relatively unfamiliar process, great care will be taken to see that the development, architectural, and engineering plans, and construction are completed with heightened awareness of the environmental impacts. As a local chapter's responsibility, the Fund is actively considering professional services firms, many of which have extensive experience in designing and constructing golf facilities on existing landfill sites. The Fund has also agreed to assist the City in securing environmental consultation and legal services, if the need should arise.

This opportunity is a model for how public/private partnerships are expected to work. Because of this partnership, Parks and Recreation will be the recipient of a state of the art golfing facility with clubhouse, driving range, teaching areas, and several golfing holes; in addition to a capital investment in excess of \$400,000, and maintenance provided by the Scott Robertson Memorial Fund. The Scott Robertson Memorial Fund realizes the goal of being able to provide instruction, and introduce the game of golf to all youth in our community at little or no cost to each participant. This project also utilizes a park site with limited development opportunities and transforms this brown-field into a renewable community resource.

Recommended Action:

Following the public hearing, authorize the City Manager to execute the attached Agreement and approved as to form by the City Attorney between the City and Scott Robertson Memorial Fund to operate a golf facility for a period of 15 years.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Darlene L. Burcham", written in a cursive style.

Darlene L. Burcham
City Manager

DLB:kaj

Attachment

c: Rolanda A. Johnson, Assistant City Manager for Community Development
 Mary F. Parker, City Clerk
 William M. Hackworth, City Attorney
 Jesse A. Hall, Director of Finance
 Steven C. Buschor, Director of Parks and Recreation

#CM02-00096

CONSTRUCTION, OPERATING AND MAINTENANCE AGREEMENT

This Construction, Operating and Maintenance Agreement (hereinafter, "Agreement") is entered into this 1st day of May, 2002, by and between the City of Roanoke, Virginia (hereinafter, "City") and _____, a 501 (c)(3), a not for profit corporation (hereinafter, "Lessee") for the construction, operation and maintenance of a golf facility at East Gate Park (hereinafter, "Property") in the City of Roanoke, Virginia.

WHEREAS, Lessee will develop such golf facility to be known as _____;
and

WHEREAS, Lessee has represented to the City that it will operate as a 501(c)(3) organization and has formed a Board of Directors and staff capable of providing the financial and professional support necessary to sustain the successful operation of a golf course facility in the City; and

WHEREAS, the City is willing to enter into an operating agreement with Lessee based on Lessee's representations of adequate capitalization; and

WHEREAS, the City and Lessee desire to create a unique first-class golf facility in the City which will make golf available to people of all diversities and social strata, particularly children and young people who otherwise may not have any opportunity to learn to play the game; and

NOW, THEREFORE, for the premises and conditions set forth herein, the parties agree as follows:

ARTICLE I

1.1 For the purposes of this Agreement, the following defined terms shall have the meanings specified below:

(a) "City" shall mean the City of Roanoke, Virginia, a Virginia municipal corporation.

(b) "Lessee" shall mean _____, a Virginia nonstock corporation organized pursuant to Section 501(c)(3) of the Internal Revenue Service Code, or any of its employees, agents, independent contractors, or volunteers.

(c) "Property" shall mean that portion of certain real estate located in the City of Roanoke, Virginia, generally known as East Gate Park, as depicted on Exhibit A.

(d) "Facility" shall mean all of the improvements made to the Property by Lessee under this Agreement, including a golf course facility, with appropriate irrigation, a tot course, a practice green, and a clubhouse/pro shop and concession facilities.

ARTICLE II

2.1 **Term**: The initial term of this Agreement shall be for fifteen (15) years, provided that Lessee has consistently operated and maintained the Facility in compliance with the terms of this Agreement.

2.2 **Property accepted "as is"**: Lessee represents that it has inspected the Property, determined that it is suitable for its intended purposes, and accepts the Property "as is". This Agreement is contingent upon Lessee receiving necessary zoning, building, environmental and other approvals from appropriate agencies.

2.3 **Use of Property**: Except as otherwise may be provided herein, the Property shall be used solely in connection with the development of a golf facility for use by the general public consistent with the terms of this Agreement.

ARTICLE III

3.1 **Construction, operation and maintenance duties of Lessee**: Lessee shall construct, operate and maintain on the Property at its sole cost and expense a golf course facility, with appropriate irrigation, a tot course, a practice green, and a clubhouse/pro shop and concession facilities. The design of such improvements shall be approved by the Director of Parks and Recreation for the City of Roanoke prior to any construction, which approval shall not be unreasonably withheld. Construction of the improvements shall be completed substantially in accordance with the final approved plans and specifications. The layout and maintenance of the Facility shall be consistent and in conformity with comparable golf facilities and United State Golf Association Greens Section recommendations as set forth in Exhibit B. Lessee shall ensure that all contractors, subcontractors, materialmen, suppliers and laborers are fully paid in a timely fashion and shall take appropriate action to ensure that there are no claims against, or liens on property owned by the City or on improvements on such property.

3.2 **Funding**: Lessee shall provide a minimum of four hundred thousand dollars and no cents (\$400,000.00) towards the construction of the Facility as described in Article 3.1

above. Lessee shall provide the City with evidence of payment of such funds towards the construction of the Facility within thirty (30) days after payment for the construction of the Facility but not later than November 1, 2002. Any portion of Lessee's four hundred thousand dollars and no cents (\$400,000.00) not needed for the construction of the Facility shall be retained by Lessee in a construction reserve fund for the future improvement of the Facility. In addition, Lessee shall be responsible for the payment of all expenses related to the operation and maintenance of the Facility following the execution of this Agreement.

- 3.3 **Utilities:** Lessee acknowledges the City's right and obligation at its sole expense, to continue to maintain, monitor, improve, extend or replace existing utilities, methane gas lines, manholes, monitoring stations and burn pad on the Property in accordance with applicable laws. In this regard, Lessee shall coordinate the layout, construction, operation and maintenance of the Facility to protect and provide the City continued access, at no cost to the City, to existing utilities, methane gas lines, manholes, monitoring stations and burn pad. Lessee shall be responsible for locating any existing utilities on the Property. The City will assist Lessee in locating existing utilities on the Property by providing any available utilities drawings and information. Lessee shall be liable for any damages to existing utilities, methane gas lines, manholes, monitoring stations and burn pad caused by Lessee's construction and maintenance activities on the Property.
- 3.4 **Construction Bond:** Construction of the Facility shall be performed by a contractor selected by Lessee. Prior to construction, Lessee shall provide a standard contractor's performance bond, letter of credit, or other surety in amount and form acceptable to the City Manager for the City of Roanoke which, in the City Manager's reasonable discretion, shall guarantee construction of the Facility and which shall be released following the City's determination that Lessee has constructed the Facility in accordance with the terms of this Agreement and the City's receipt of evidence of payment and verification that all payments for work performed have been made. In the event of default, or failure to cure any deficiency under this Agreement, City shall have the right to withdraw for the City's benefit such surety. The City may use such funds to either complete the Facility or remove the same from the Property and return the Property to its pre-construction condition. If all the improvements proposed under this Agreement are not completed by November 1, 2002, Lessee shall extend the term of the performance bond until such improvements are completed and the Facility opens for operation.
- 3.4.a. **Performance Bond:** Lessee shall provide and maintain a standard performance bond, letter of credit or other surety in an amount of _____ to ensure the performance of the terms of this Agreement. In the event of default, or failure to cure any deficiency under this Agreement, the City shall have the right to withdraw for the City's benefit such surety. The City may use such funds to continue the operation of the Facility, and upon withdrawal of such funds, the City shall have the right to declare this Agreement terminated and enter the Property and operate the Facility.

- 3.5 **Permit:** Lessee shall be responsible, at its sole expense, to secure all necessary approvals and permits for the construction of the Facility, and for all related fees for such approvals and permits.
- 3.6 **Installation of Utilities:** Lessee shall be responsible, at its sole expense, to install or otherwise provide any necessary utility services up to and on the Property for the Facility, including without limitation, water, sewer, irrigation, electric, gas, telephone and cable, and Lessee shall pay all related connection fees for such services.
- 3.7 **Inspection:** During construction of the Facility, Lessee shall cooperate with the City's Director of Parks and Recreation and allow the Director and other City officials to inspect the site. Upon reasonable notice and during normal weekday working hours, the City shall have the right to inspect the Facility, and to inspect or audit the records of the Facility, for the purpose of determining compliance with the terms and conditions of this Agreement. In addition, Lessee shall provide the City annually by December 31 with a business plan for the succeeding three (3) years which contains projections of revenues, expenses, capital improvements, or other financial planning information the City may reasonably request.
- 3.8 **Beginning of construction:** Construction of the Facility shall commence on or about July 1, 2002, and shall be completed with operation of the driving range and golf course commencing on or about November 1, 2002, and the operation of the clubhouse commencing on or about that same date, provided that Lessee shall not be responsible for delays due to acts of God, stormy or inclement weather, environmental or construction permits, or acts by others or circumstances which are reasonably beyond its control.
- 3.9 **Standards of maintenance:** Once the Facility is constructed, Lessee shall maintain the Facility and grounds at its sole expense in good order, in sanitary and safe condition, and to a high-quality industry manner and level. All work shall be performed by qualified staff or contractors in a professional manner. Upon completion of the Facility and opening of the same to the public, Lessee shall employ a qualified Golf Course Superintendent who is a member of the Golf Course Superintendent's Association of America and who is a licensed chemical applicator. Lessee shall subscribe membership to the United States Golf Association, and will to the extent practicable seek the review and input of the Greens Section with respect to agronomic conditions of the course.
- 3.10 **Environmental assurances:** During the term of this Agreement, Lessee covenants and agrees to maintain the Facility and grounds at all times so that (i) there are no "Hazardous Substances" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Section 9601 et seq., as amended, at or on the Facility except pre-existing Hazardous Substances and those listed on an inventory furnished to and approved by the City, if any, which shall be kept current by Lessee and shall identify the type, quantity and location of each such Hazardous Substance; (ii) there is not a release or threat of release of any Hazardous Substance caused or knowingly permitted by Lessee; (iii) the Facility shall not be subject to liability to any person because of the presence of (A) stored, leaked or spilled petroleum products, (B) underground storage tanks or (C) an accumulation of rubbish, debris, or other solid

waste, or because of the presence, release, threat of release, discharge, storage, treatment, generation or disposal of any "hazardous waste" (as defined by the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq.; as amended) in addition to that which may exist on the Property on the date of this Agreement.

- 3.11 **Compliance with law:** Lessee, and any agent of Lessee, designated with program or operating responsibilities shall (i) comply with any applicable law, ordinance, rule, regulation, order or other legal or governmental requirement with respect to the Facility, or its renovation, construction, operation or maintenance, including, but not limited to, federal and state labor and tax laws, OSHA, the Americans with Disabilities Act, workers' compensation, environmental, social security, unemployment insurance, hours of labor, wages, working conditions, and other employer-employee related matters; (ii) advise the City promptly in writing of any substantial property damage to the Facility, any bodily injuries sustained by any person at the Facility, service upon or receipt by Lessee of any summons, subpoena or other similar legal documents, including notices, letters, communications or claims of any actual or alleged defaults by, claims or actions against, or potential liabilities of or relating to Lessee, or the Facility; (iii) timely pay any operating expenses, taxes, assessments and charges relating to the Facility; (iv) timely apply for and obtain and/or renew any approvals, licenses, permits, consents, authorizations, certificates or similar documents or actions required in connection with the program or the development or operation of the Facility; (v) hire, discharge, supervise, and carefully monitor the workers or personnel employed, and all agents, contractors, subcontractors or volunteers performing services in or about the Facility, provided Lessee shall only engage qualified competent and experienced personnel and volunteers (exercising an increased level of care at all events, recognizing that many of the participants are young people); (vi) provide effective safety and security programs; (vii) implement conscientious environmental and conservation planning, including compliance with applicable environmental regulations with respect to operating a golf facility on a former landfill area; (viii) establish and maintain a diverse and effective Board of Directors; (ix) keep, supervise and direct the keeping of, full, separate and adequate books of accounting as well as records reflecting gross revenues and operating expenses of the Facility, achievement of program goals and realization rates, tracking of program participants, development of off-site teaching programs and relationships with area schools and golf courses, and other data relevant to the long term assessment of the success of the operation of the Facility.
- 3.12 **Purpose:** Lessee shall make golf more accessible to people of all diversities and social strata, particularly young people who otherwise may not have an opportunity to learn and play the game by creating facilities and programs at selected sites (the "Purpose"). Lessee shall accomplish the Purpose by combining affordable access with a life skills curriculum that emphasizes golf's unique ability to instill and develop essential values, such as honesty, integrity, sportsmanship, self-discipline, respect and a solid work ethic, and to give those young people the confidence and skills to pursue broader goals in life.
- 3.13 **Access to Facility:**

- (a) Lessee shall provide extraordinary access to golf for young people who are registered participants at the Facility. This will include on-site instruction and dedicated access to the golf facility and practice areas. Lessee shall also use its best efforts to develop off-site teaching programs to provide access to other area golf facilities ("Affiliated Facilities") and will encourage such Affiliated Facilities to provide reduced rates for participants of Lessee's program. For registered participants in Lessee's program, Lessee shall provide no less than 12 hours per week of programming at the Facility, which shall include free group instruction, both on the outdoor golf facility and in a classroom setting. Classes shall include beginning, intermediate and advanced group instruction over a 4 month period. Lessee shall also provide for each registered participant access to 4 rounds of golf per month at the Facility or, alternatively, may provide such access to an Affiliated Facility, at no cost or at low or discounted rates. Use of the Facility shall also be provided at rates affordable to the participants.
- (b) In addition, Lessee shall use its best efforts to plan, develop and implement programs and initiatives: (i) for pre-teen youths; (ii) for the disabled, including physically and mentally challenged participants; (iii) for the deaf; (vi) for disadvantaged inner-city groups and youths, particularly minorities; (v) with local not for profit groups, such as the YMCA, YWCA, Boy's and Girl's Clubs, etc., as well as the City of Roanoke; (vi) with area elementary and middle schools, high schools and community colleges; and (vii) as the parties mutually designate.

3.14 **Rent:** Rent shall be ten dollars (\$10.00) annually, payable on the 1st day of July each year, beginning in 2002. Such rent shall be paid to the Director of Parks and Recreation, 210 Reserve Avenue, Roanoke, Virginia 24016

ARTICLE IV

4.1 **Insurance:** Lessee shall provide and keep in full force and effect during the period that this Agreement is in effect the kinds and amounts of insurance prescribed in this paragraph, and shall comply with all other provisions of this paragraph. Such insurance shall be provided and kept in full force by insurance companies authorized to do business in the Commonwealth of Virginia and acceptable to the City. All premiums and other costs of such insurance shall be paid by Lessee. Each insurance policy and certificate of insurance shall be signed by duly authorized representatives of such insurance companies in the Commonwealth of Virginia and shall be countersigned by duly authorized local agents of such companies. All certificates of insurance shall show the name of location as "East Gate Park." Lessee shall not be required to furnish the City with copies of the insurance contracts required by this paragraph. Lessee shall provide a certificate of insurance issued by such insurance companies in which the company shall irrevocably warrant that the insurance is provided to enable Lessee to comply with and provide the required insurance. The insolvency or bankruptcy of Lessee shall not release the insurer from its obligation to satisfy claims otherwise within the coverage of such policies. At the time of execution of this Agreement, Lessee shall attach to this Agreement an original certificate of insurance for each of the following:

- A. Commercial General Liability Insurance with a combined single limit of not less than two million dollars and no cents (\$2,000,000.00) per occurrence.
 - B. Statutory Worker's Compensation and Employer's Liability with the Alternate Employers Endorsement WC 000301. If any employee of the Contractor is not subject to the provisions of the Virginia Worker's Compensations Act, the Contractor shall nevertheless insure payment of the same compensation to such employee as is provided for by the Virginia Workmen's Compensation Act.
 - C. Other insurance as required based upon the nature of the contract.
 - D. All insurance contracts shall be written or endorsed so as to preclude the exercise of the right of subrogation against the City
- 4.2 All insurance required under this Article and as may be required in the future shall name the City, its officers, employees, agents and volunteers, as additional insureds, and shall provide for a ninety (90) day notice to be sent to the Risk Manager for the City prior to cancellation or any changes in the policies.
- 4.3 All certificates of insurance required under this section and any which may be required in the future must be reviewed and approved by the Risk Manager for the City.
- 4.4 **Indemnification:** Lessee agrees and binds itself and its successors and assigns to indemnify, keep and hold the City and its officers, employees, agents, volunteers and representatives free and harmless from any liability on account of any injury or damage of any type to any person or property growing out of or directly or indirectly resulting from any act or omission of Lessee including: (a) Lessee's use of East Gate Park or any part of it; (b) Lessee's construction, operation, maintenance of the golf facility located at East Gate Park; (c) the exercise of any right or privilege granted by or under this Agreement; or (d) the failure, refusal or neglect of Lessee to perform any duty imposed upon or assumed by Lessee by or under this Agreement. In the event that any suit or proceeding shall be brought against the City or any of its officers, employees, agents, volunteers or representatives at law or in equity, either independently or jointly with Lessee on account thereof, Lessee, upon notice given to it by the City or any of its officers, employees, agents, volunteers or representatives, will pay all costs of defending the City or any of its officers, employees, agents, volunteers or representatives in any such action or other proceeding. In the event of any settlement or any final judgment being awarded against the City or any of its officers, employees, agents, volunteers or representatives, either independently or jointly with Lessee, then Lessee will pay such settlement or judgment in full or will comply with such decree, pay all costs and expenses of whatsoever nature and hold the City or any of its officers, employees, agents, volunteers or representatives harmless therefrom.

ARTICLE V

- 5.0 **Operation and maintenance of the Facility:** Lessee agrees that the Property and the Facility will be operated, managed and utilized as follows:
- 5.1 Lessee shall guarantee that the Facility shall be open to the general public on a schedule approved by the City with business hours and tee times dedicated for people under the age of 18 years in accordance with the goals, vision and national objectives of The First Tee program as set forth in Exhibit _____. Lessee shall provide the City with details of programs targeted for children and provide the City with annual reports which reflect its financial strength and the level of success the program reached in meeting its targeted goals.
- 5.1.a. All published or furnished information (including signage) shall include the City of Roanoke Parks and Recreation Department logo.
- 5.2 A published fee schedule (including, without limitation, green fees, event fees and similar charges) shall be established by Lessee, with the consultation of the City, and with the intent of having the lowest youth fees available in the local market for comparable facilities. Children under the age of 18 years and adults 55 years in age or older, residing in the City of Roanoke will receive discounted rates off of the published fee schedule. The published fee schedule shall reflect scholarships available to participants on terms identical to scholarships granted by the City of Roanoke Parks and Recreation Department for similarly situated children.
- 5.3 Lessee's operation of the Facility shall be on a "not-for-profit" basis and its books and records shall be kept in accordance with generally accepted accounting practices for non-profit corporations. Lessee shall be allowed to establish reasonable capital and operational reserves consistent with the operation of a "first-class" golf course facility. To the extent there are any revenues in excess of operating expenses derived from the Facility, 100% must be used for physical improvements to the Facility or for reducing the fees charged to the public. Any revenues generated from fund-raising, sponsorships and other sources other than Facility use or Facility usage fees may be designated for use by Lessee for such other nonprofit purposes as Lessee deems appropriate and consistent with its corporate purpose.
- 5.4 (a) Lessee shall cause to be conducted an annual audit of the entire operation of the Facility in accordance with generally accepted auditing standards. The audit shall be conducted by a certified public accountant licensed to practice in the Commonwealth of Virginia who is acceptable to the City.
- (b) The annual audited financial report shall be prepared in accordance with generally accepted accounting principles. Generally accepted accounting principles and generally accepted auditing standards are as defined by the American Institute of Certified Public Accountants.
- (c) Lessee shall provide copies of all annual audit reports to the City within 30 days of the receipt of such reports from its auditors.

- (d) Lessee shall address any adverse finding(s) of such audits in a prompt and diligent manner within 90 days of the receipt of the audit reports.
- 5.5 The Facility shall be made reasonably available free of charge for the City's Parks and Recreation instructional programs and to Roanoke public schools for physical education classes and school tournaments during non-peak hours, subject to Facility capacity restrictions and on a schedule to be agreed upon between the City and Lessee.
- 5.6 The Facility and the Property shall be subject to the rules and regulations of City parks, except as otherwise provided in the Agreement.
- 5.7 Lessee shall operate the Facility in compliance with all applicable federal, state and local laws and regulations, including conditions of zoning and applicable civil rights and accessibility legislation.
- 5.8 The Facility shall be known as _____. Any other names or designations sought by Lessee shall be subject to the approval of City Council for the City of Roanoke at an open meeting of such body.
- 5.9 **Drug-free workplace:** Lessee will: (i) provide a drug-free workplace for Lessee's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in Lessee's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of Lessee that Lessee maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over ten thousand dollars and no cents (\$10,000.00), so that the provisions will be binding upon each subcontractor or vendor. For the purpose of this subsection, "drug-free workplace" means a site for the performance of work done in connection with this contract.

ARTICLE VI

- 6.1 **Management of Facility and minority business participation:** Lessee reserves the right to manage all or any part of the Facility and may include Pro Shop or Concessions related activities. In so doing, Lessee may also subcontract out the operation of such activities. Any such subcontracting, or the maintenance or operation of the Facility by Lessee, will comply with City policies regarding minority business participation and minority employment. Such operation, however, must not jeopardize the status of Lessee as a public, nonprofit foundation according to the Internal Revenue Code.
- 6.2 **Anti-discrimination:** Lessee will comply fully with Title VI and Title VII of the Civil Rights Act of 1964, as amended, and all other regulations promulgated thereunder. During the performance of this Agreement, Lessee agrees as follows:

- (a) Lessee will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the golf course. Lessee agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 - (b) Lessee, in all solicitations or advertisements for employees placed by or on behalf of Lessee, will state that such Lessee is an equal opportunity employer.
 - (c) Notices, advertisement and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
 - (d) Lessee will include the provisions of the foregoing subsections (a), (b) and (c) in every contract or purchase order of over ten thousand dollars and no cents (\$10,000.00) so that the provisions will be binding upon each contractor or vendor.
- 6.3 **Control of Lessee's employees:** All full-time and part-time personnel employed by Lessee shall at all times be employees of Lessee. Lessee shall have the absolute discretion to hire, promote, supervise, direct and train all employees, to fix their compensation and, generally, establish and maintain all policies relating to employment.

ARTICLE VII

- 7.1 **Default by Lessee:** In the event that Lessee fails to develop, maintain or operate the Facility in accordance with the terms and conditions of this Agreement, the City will give Lessee written notice and thirty (30) days from the date of receipt of such notice to cure the default, or if a cure can not be made within thirty (30) days, to initiate a cure within thirty (30) days and diligently pursue a cure thereafter, failing which the City will have the right to terminate the Agreement or enter the Property, or both, and to operate and maintain the Facility, or cease operation thereof, and Lessee shall reimburse the City for all such expenses reasonably incurred by the City.
- 7.2 **Reversion of the Property:** The Property and any other improvements thereon will revert to and become the property of the City upon the expiration or termination of the Agreement. Lessee shall be responsible for the removal of its personal property at the expiration or termination of this Agreement, provided that Lessee shall be responsible for the cost of repair of any damage caused during such removal. Failure by Lessee to remove any of its personal property within thirty (30) days of the expiration or termination of this Agreement shall authorize the City to remove the same and dispose of it in any manner it deems appropriate.

7.3 **No sublease, assignment or subcontract of the property:** The rights and obligations under this Agreement are personal, and Lessee shall not assign or subcontract the Agreement, the Property, the Facility, or its rights under the Agreement, without the prior written consent of the City Manager for the City of Roanoke.

7.4 **Notices:** Any notices to be provided to a party under this Agreement shall be given in writing by certified mail, return receipt requested, directed to:

City: Director of Parks and Recreation for the City of Roanoke
210 Reserve Avenue
Roanoke, Virginia 24016

with a copy to:

City Attorney for the City of Roanoke
215 Church Avenue, S. W., Room 464
Roanoke, Virginia 24011-1595

Lessee:

7.5 **Governing law:** This Agreement shall be governed by the laws of the Commonwealth of Virginia, and any action brought to enforce its provisions shall be brought in the Circuit Court of the City of Roanoke.

7.6 **Severance:** If any provision of this Agreement is deemed unenforceable by the Circuit Court of the City of Roanoke or any other court with jurisdiction to hear matters raised by this Agreement, the remainder of the Agreement shall not be affected thereby.

7.7 **Non-appropriation:** The City shall be bound under this Agreement only to the extent that there are funds available to perform its obligations hereunder.

7.8 **Representatives not individually liable:** No member, commissioner, trustee, officer, official, representative, employee, director or partner, or their respective successors or assigns, of the City or Lessee shall be personally liable to either of the parties to this Agreement in the event of any default or breach of any obligation under the terms of this Agreement. However, the provisions of this Section shall not release the parties thereto from any of their obligations hereunder.

7.9 **Non-waiver:** No party hereto shall be deemed to have waived the exercise of any right hereunder unless such waiver is made expressly and in writing by the person, or that person's successors, who has executed this Agreement, and no such waiver of any such right in any one instance shall be deemed a waiver as to any other instance of any other right.

- 7.10 **No third-party beneficiaries:** The warranties, representations and covenants contained herein and the rights and obligations created hereby shall not give rise to any third-party beneficiary rights in any persons, but shall be for the exclusive benefit of, and enforceable by, the parties hereto, their successors and assigns.
- 7.11 **Incorporation of exhibits:** All of the Exhibits attached hereto are hereby incorporated into this Agreement and made a part hereof.
- 7.12 **Headings:** The headings in this Agreement are for purposes of convenience only and shall not modify or enlarge the interpretation of the text of this Agreement. The words "herein," "hereof" and "hereunder" and other words of similar import shall refer to this Agreement as a whole and not to a particular article, section, subsection or paragraph.
- 7.13 **Completeness; modification:** This Agreement constitutes the entire agreement between the parties hereto with respect to the transactions contemplated hereby and supersedes all prior discussions, understandings, agreements and negotiations between the parties hereto. This Agreement may be modified only by a written instrument duly executed by the parties hereto by the person, or that person's successor, who has executed this Agreement.
- 7.14 **No partnership:** This Agreement does not and shall not be construed to create a partnership, joint venture or any other relationship between the parties hereto.
- 7.15 **Consents and approvals:** Wherever in this Agreement a party has the right to consent to or approve a proposed action by the other party, such consent or approval shall be provided in writing in a timely manner.
- 7.16 **Successors and assigns:** Except as otherwise specifically provided herein, the terms and provisions of this Agreement shall be binding upon, and shall inure to the benefit of, the successors and assigns of the parties.
- 7.17 **Faith-based organizations:** Pursuant to §2.2-4343.1 of the Code of Virginia (1950), as amended, the City of Roanoke does not discriminate against faith-based organizations.

WITNESS the following signatures and seals:

CITY OF ROANOKE, VIRGINIA

ATTEST:

Mary F. Parker, City Clerk

by _____
Darlene L. Burcham, City Manager

ATTEST:

(Title)_____

Approved as to Form:

Assistant City Attorney

LESSEE:

Name: _____
Its _____

Approved as to Execution:

Assistant City Attorney

**CITY OF ROANOKE
PLANNING BUILDING AND DEVELOPMENT**

215 Church Avenue, S.W., Room 166
Roanoke, Virginia 24011
Telephone: (540) 853-1730 Fax: (540) 853-1230
E-mail: planning@ci.roanoke.va.us

Architectural Review Board
Board of Zoning Appeals
Planning Commission

May 20, 2002

Honorable Ralph K. Smith, Mayor
Honorable William H. Carder, Vice Mayor
Honorable William D. Bestpitch, Council Member
Honorable C. Nelson Harris, Council Member
Honorable W. Alvin Hudson, Council Member
Honorable William White, Sr., Council Member
Honorable Linda F. Wyatt, Council Member

Dear Mayor Smith and Members of City Council:

Subject: Request from Wanda B. Reed, Acting Director of Parks and Recreation, requesting that the Planning Commission make a determination as to whether the use of a portion of East Gate Park for a First Tee Golf Program, as more fully described in a letter dated April 18, 2002, to the Planning Commission, is substantially in accord with Vision 2001-2020, the Comprehensive Plan for the City of Roanoke.

Planning Commission Action:

Planning Commission public hearing was held on April 18, 2002. By a vote of 6-0 (Mr. Hill absent), the Commission determined that the use of a portion of East Gate Park for a First Tee Golf Program was substantially in accord with Vision 2001-2020, the City's comprehensive plan.

Background:

The Scott Robertson Memorial Fund has requested that the City of Roanoke consider a 15-year lease of approximately 29.73 acres in East Gate Park for a golf facility (see attached letter dated April 18, 2002 and supplemental materials). Because the proposal would use dedicated public park land for a specific private organization operating a golf program for the public, it was recommended that the Planning Commission consider this matter and make a determination with respect to its accordance with the *Vision 2001-2020* Comprehensive Plan.

Planning Commission public hearing was held on April 18, 2002. Mr. Rife stated that during his participation in the development of the Parks and Recreation Comprehensive Master Plan that this particular site was acknowledged as a potential golf course.

Mr. Chrisman and Mr. Rife both asked the Petitioners and the potential lessee if the proposed use would be available for adults as well as children, and how user fees would apply. A representative of the Scott Robertson Memorial Fund responded that the proposed use would be open to adults at certain times, who would pay market-rate user fees, while children's fees would be subsidized by the program.

Several Commission members had a discussion on the matter of the landfill at the site, and what uses of the property were possible. Citing examples of other City landfill sites in South Roanoke and Washington Park, it was agreed that a golf course was one of the few things that could be developed on a landfill such as the subject property.

Considerations:

The Parks and Recreation Comprehensive Master Plan (2000) was adopted as a part of *Vision 2001-2020*. East Gate Park is included in the parks plan. The park was dedicated in 1968 and includes a portion that was previously a landfill. The specific boundaries of the landfill area within the park are unknown. The park currently has a playground with two structures, a picnic shelter, a basketball court and a gravel parking lot. Trees line the perimeter of the park along 13th Street, while the area of the proposed use is open green space.

The land use surrounding the park is predominantly single-family residential with a few multifamily dwellings. A number of adjacent parcels are vacant and undeveloped.

City sewer and water serve the homes surrounding the area. The area has adequate utilities that can be connected to serve the proposed use.

Vision 2001-2020 encourages diversifying park facilities to enhance the quality of life in the City, suggests the implementation of user fees, and encourages public/private partnerships as a means of implementing plan items.

Recommendation:

Planning Commission, by a vote of 6-0 (Mr. Hill absent) finds that the proposal to use a portion of East Gate Park for a golf facility, including First Tee Junior Golf Program, is substantially in accord with the City's Comprehensive Plan. The proposed use of the property will enhance the City's quality of life and further the goals of both the *Parks and Recreation Comprehensive Master Plan* and *Vision 2001-2020*.

Respectfully submitted,

A handwritten signature in black ink, reading "Robert B. Manetta". The signature is fluid and cursive, with the first name "Robert" and last name "Manetta" clearly legible.

Robert B. Manetta, Chairman
City of Roanoke Planning Commission

attachment

cc: Darlene L. Burcham, City Manager
Rolanda Johnson, Assistant City Manager for Community Development
William M. Hackworth, City Attorney
Steven J. Talevi, Assistant City Attorney
Steven C. Buschor, Parks and Recreation Director



200 Reserve Avenue SW Roanoke, Virginia 24016 540/853-2236 FAX 540/853-1287

RECYCLED PAPER

April 18, 2002

Mr. Robert Manetta, Chair and
Members of the City Planning Commission
215 Church Ave., Room 166
Roanoke, VA 24016

Dear Mr. Manetta:

Subject: First Tee Golf Program

East Gate Park, located on North Avenue, N. E. between 13th Street and Tinker Creek is approximately 59 acres. Park amenities include a playground, shelter with restrooms and one-half basketball court. Parks and Recreation Comprehensive Master Plan does not identify additional public investment in this park because of the challenges of locating recreational facilities on a landfill; i.e., athletic fields cannot be installed due to lighting requirements which would require disturbing the landfill.

The Scott Robertson Memorial Fund has requested a 15 year lease of approximately 40 - 50 acres in East Gate Park to implement a First Tee Junior Golf Program. The Scott Robertson Memorial Fund is a 501(C)3 organization, Tax ID # 541295509. The proposed facility would include 3 - 6 short holes, a driving range and short game for bunker, putting green and a chipping area. A 2,000 sq. ft. building would include a teaching area and storage facility. An engineering study would determine feasibility for this project in East Gate Park.

The facility will be available to the general public during open hours. When not in use for programs benefitting young people, fees charged to the general public will be fair market price with all revenue going back into the facility to support the youth programs. Scholarships for youth throughout the City will be funded by corporate donations. Off-street parking for no more than 40 - 50 cars will be provided with an appropriate buffer between the facility and the adjoining property owners. Minimal lighting is required around the training center only, and late night traffic would not be a concern as the facility will not be open after dark. **Attachment "A"** provides additional information about the program. A map of East Gate Park outlining the conceptual location for the program is included as **Attachment "B"**.

Parks and Recreation believes this facility, as recommended, would enhance the neighborhood and park use and that the community would receive tremendous benefit from this privatization initiative. The program meets the initiatives outlined in the Parks and

April 18, 2002

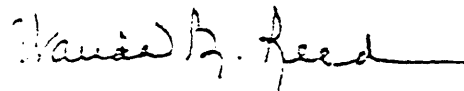
Page 2

Recreation Comprehensive Master Plan which was adopted as a component of Vision 2001-2020 the City's Comprehensive Plan. **Attachment "C" Action Strategy 3: Funding Strategies, Section G** provides details of the Parks and Recreation Master Plan which encourages privatization opportunities such as this initiative.

The East Gate Church of the Nazarene hosted a community meeting on Monday, March 4 to determine the interest of the neighborhood in this project. There was no citizen representation at the meeting. The minister, however, advised that the issue had been discussed by their membership and that the project is fully supported by their congregation.

Because a portion of this public park will be operated privately and will not be available for general recreation by the public during limited times, I respectfully request that the Planning Commission determine whether this use of East Gate Park is substantially in accord with Vision 2001-2020 the Comprehensive Plan for the City of Roanoke.

Sincerely,

A handwritten signature in black ink, appearing to read "Wanda B. Reed", with a long horizontal flourish extending to the right.

Wanda B. Reed
Acting Director

WBR/kaj

Enclosures

BACKGROUND

- The Scott Robertson Memorial Fund is associated with the World Golf Foundation, Inc. and the First Tee Junior Golf Program. The backing of The First Tee program guarantees a quality facility and the provision of grants, up-front funding, discounts by large corporations for construction costs, etc. for the on-going cost of the program.
- This program will provide every young person in the region an opportunity to experience the challenges and joys of the game of golf while preparing them for the obstacles and opportunities of life. Physical and mental preparation, planning, perseverance, self-esteem, confidence, integrity and discipline are enduring success elements for golf as well as a fulfilling life.
- There is no cost to the City. The capital cost of the project is a minimum of \$400,000 with annual operating cost estimated at \$125,000. All improvements and expenses will be paid by the Scott Robertson Memorial Fund.
- The Scott Robertson Memorial holds an annual golf tournament, a premier junior golf competition in the country to showcase the talents of boys and girls from around the world and to reinforce the values of the game.
- A eighteen (18) year commitment to youth
- Board of Directors includes business and civic leaders in addition to amateur and professional golfers
- Organized as a charitable, tax-exempt organization
- Over \$175,000 in academic scholarships awarded to Roanoke youngsters
- Annual tournament among top 10 junior golf events in the country with players from more than 20 states and 15 countries

- National organization organized in 1997 and chaired by former President George Bush
- Goal is to develop affordable and accessible golf facilities targeted toward young people up to age 18 who have not had exposure to game
- Four projects in Virginia
- First Tee provides assistance to create facility and curriculum for strong life skills including community service and mentoring
- Tiger Woods Foundation is strong financial support of First Tee and he is intimately involved in program. Tiger visited Norfolk's program three times last year.
- Academy would provide learning environment for golf and include all weather driving range and teaching center utilizing state of the art technology and teaching aids.
- Academy would provide needs based scholarships to juniors for golf instruction and participation in programs
 - Applicants must have solid school attendance, satisfactory grades and good character. Golf potential is not be consideration.
- To foster mentoring opportunities, there would be dedicated area where volunteers repair clubs for distribution to kids
- Financial support for Academy from public use during times not used by juniors and ongoing support by Scott Robertson Memorial Fund.
- Program to introduce golf to elementary school students underway for several years
- Summer instruction program involving approximately 100 youth conducted last year at Blue Hills
- Boys and Girls Club of Roanoke has indicated support for program
- First Tee representatives have visited Roanoke and provided verbal commitment for financial support subject to acceptable site



Action Strategy 3: Funding Strategies

Develop and implement funding strategies to aggressively fund the vision of Parks and Recreation into the year 2010.

Creative methods are needed to fund changes and to maintain a high level of services for citizens. Current wisdom in the parks and recreation industry suggests four ways to do this:

- *Control costs*
- *Use outside volunteer resources*
- *Create revenue-producing facilities, and*
- *Use creative funding and financing tools*

This action strategy looks to explore all of these options.

A: Reorganize Department

Reorganize the Department focused on efficiency of operations, including focusing on mission and areas of expertise. The goal will be to redirect 5% of current resources to recreation programs in FY 2001 and FY 2002, and 5% to infrastructure in FY 2003 and FY 2004, without compromising services.

Reorganizing the Department to ensure the most efficient operations possible is a necessity in the current financial environment in which the Department finds itself. Of the two divisions within Parks and Recreation, the recreation division is the one most in need of additional resources. Therefore, resources found through developing efficiencies in either division will be redirected toward recreational programming.

B: Market-Based Pricing

Obtain council approval to create market-based pricing strategies and fee-based programs.

This recommendation requires a philosophical shift in the way programs and services are priced within Parks and Recreation. The 1950's model, the model on which Roanoke City Parks and Recreation's pricing is currently based, provides for heavily subsidized programs priced for the minority of people who cannot afford to pay full price for those services. The Year 2000 model, which is currently being used by many parks and recreation departments in the country, prices services based on the majority who can afford to pay, but also accommodates those who cannot afford to pay. The result in charging prices that the market will bear (i.e. market-based prices) would be the ability of the Parks and Recreation Department to offer more, and higher quality, services to ALL people.



1: Activity Based Costing

Institute activity-based-costing within the Parks and Recreation Department.

In order to institute market-based pricing, it is necessary to know the costs of producing the product or service one provides. Current accounting practices within the Department do not enable the Department to determine costs for services rendered. Activity Based Costing is a way of accounting that would enable the Department to know the true costs of the services it provides.

Further, those with expertise in Activity Based Costing indicate it also provides support for:

- *user fees*
- *performance measures*
- *"in-house" versus outsourcing decisions*
- *program redesign*
- *performance budgeting (Younger, A.B.C. 1)*

2: Fee Policy and Pricing Strategy

Develop a Department fee policy and pricing strategy.

A Department Fee Policy and Pricing Strategy would lay out a philosophy statement, criteria for establishing fee based services, provisions for those who cannot afford market based prices, residential versus non-residential fees, special group policies and refund policies.

C: Sales Tax

Parks and Recreation should research the opportunity to use sales tax as an additional funding source for Parks and Recreation.

Through interaction with other professionals, the Parks and Recreation staff has been made aware of creative ways in which sales tax has been used to benefit parks and recreation in other localities. Researching such ideas would involve understanding the mechanisms whereby such a tax might be levied, and whether or not the public would be willing to accept such a tax.

D: Parks Foundation

Create a Parks Foundation to generate 5% of annual program and development budgets

Creating a foundation would set up the 501 (C) 3 legal framework through which philanthropic citizens and/or organizations could



contribute funds for parks and recreation projects. These could involve assistance in acquiring land, developing facilities, sponsoring programs, and buying equipment for the Department. According to Leon Younger, a specialist in parks and recreation finance, "the ability of a foundation to react quickly to funding options, to create matching opportunities with other providers, support individuals with estate planning, and serve as a trust for recreational, scenic or conservation easements is invaluable" (Younger, Funding 4).

E: Capital and Reserve Opportunity Fund

Create a capital and reserve opportunity fund

A capital and reserve opportunity fund would provide a means to set aside funds to take advantage of unexpected opportunities such as purchasing needed land for parks when it becomes available. Such a fund could be under the umbrella of a Parks Foundation, or it could be set up through some other mechanism.

F: Revenue Bonds

Fund major facilities that generate revenue via revenue bonds, e.g. the two family aquatic parks.

Revenue bonds are a popular method for financing high-use specialty facilities like golf courses, aquatic centers, ice rinks, etc. A facility financed through revenue bonds must generate enough revenue to cover its operation and service its bond debt.

G: Privatization Opportunities

Encourage privatization opportunities such as leasing park land for private enterprise. Examples of possibilities include tournaments, events, and such enterprises as a driving range on an undeveloped piece of park property.

Any opportunities for income derived from parks and recreation facilities will help ease funding challenges faced by Parks and Recreation. Further, this recommendation will help provide opportunities for private enterprise, as well as increase services to City citizens.

H: Partnering Opportunities

Create partnering opportunities with private, public and not-for-profit organizations.

Partnerships are symbiotic business relationships enabling each organization in the partnership to meet goals it would not be able

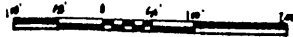


to without the other. Such relationships are becoming increasingly important in private, public and not-for-profit sectors.

I: Voluntary Funding

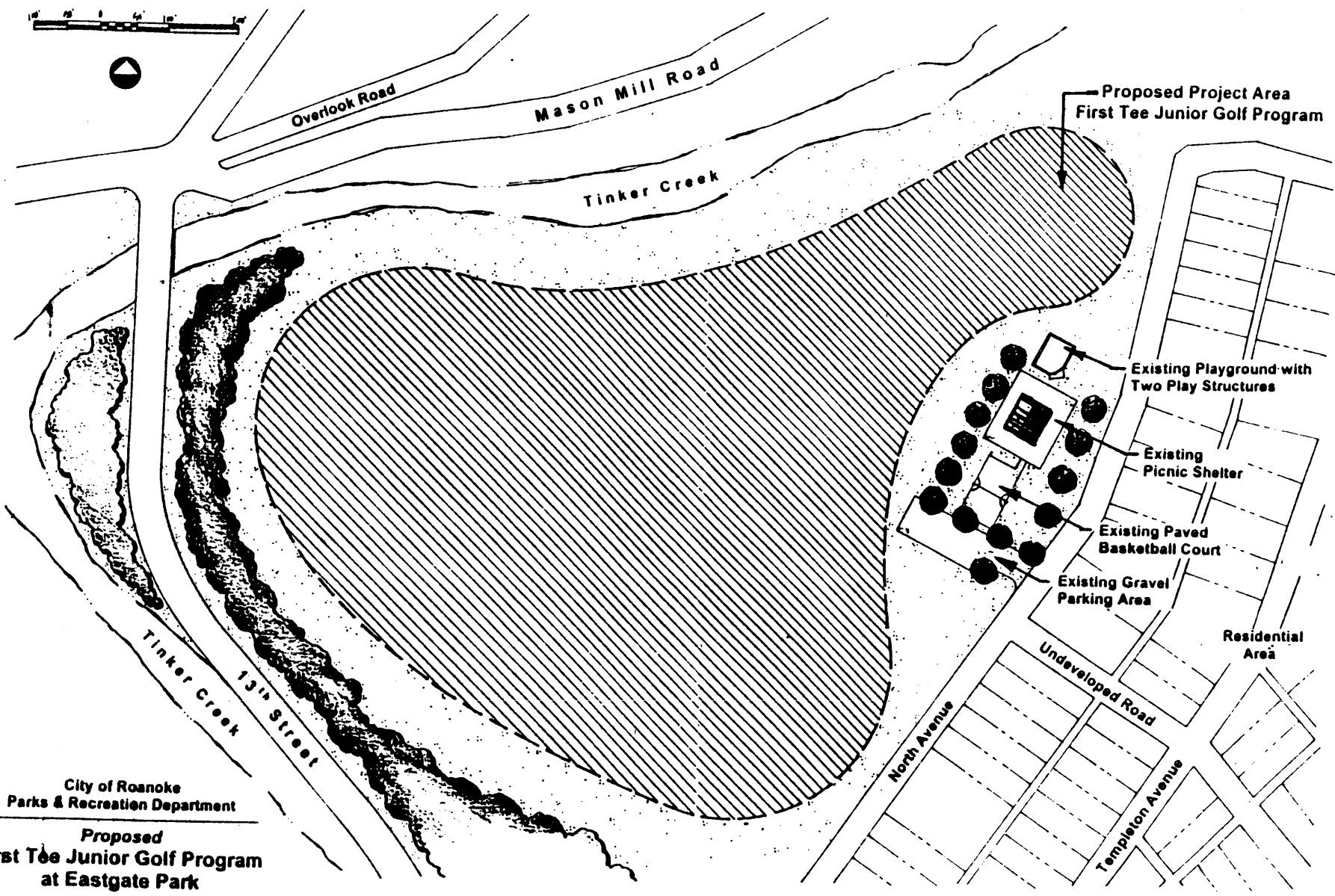
Create an opportunity for voluntary funding for specific Parks and Recreation programs such as tree-planting or greenways.

There are many creative ways of leveraging limited resources through voluntary funding programs. An example of one possible program involves asking citizens to voluntarily round up their water bill to the nearest dollar (e.g. from \$103.48 to \$104.00). The difference in the amounts would be used to help fund general, or specific, parks and recreation programs.



City of Roanoke
Parks & Recreation Department

**Proposed
First Tee Junior Golf Program
at Eastgate Park**



Project No.	1	Project Name	First Tee Junior Golf Program
Date	03/2002	Client	City of Roanoke
Author	JLM	Checked By	JLM
Reviewed By	JLM	Approved By	JLM
Drawn By	JLM	Reviewed By	JLM

City of Roanoke's Eastgate Park
**EXISTING PARK FACILITIES &
PROPOSED FIRST TEE PROJECT AREA**

LMW P.C.
ENGINEERING ARCHITECTURE SURVEYING
1001 ALBEMARLE AVE. S.E.
ROANOKE, VIRGINIA 24013
TEL: (540) 344-1000 FAX: (540) 344-1001

IN THE COUNCIL FOR THE CITY OF ROANOKE, VIRGINIA,

A RESOLUTION finding that the proposed use of a portion of East Gate Park by a private entity for a golf facility, subject to certain terms and conditions which encourage young people to learn how to play golf, is substantially in accord with *Vision 2001-2020*, the City's adopted Comprehensive Plan.

WHEREAS, *Vision 2001-2020*, the City's adopted Comprehensive Plan, encourages diversifying park facilities to enhance the quality of life in the City, suggests the implementation of user fees for parks, and encourages public/private partnerships as a means of implementing park plan items; and

WHEREAS, the *Parks and Recreation Comprehensive Master Plan* was adopted as a part of *Vision 2001-2020*; and

WHEREAS, East Gate Park is included in the *Parks and Recreation Comprehensive Master Plan*; and

WHEREAS, the proposed use of a portion of East Gate Park by a private entity for a golf facility, subject to certain terms and conditions which encourage young people to learn how to play golf, will enhance the City's quality of life and further the goals of *Vision 2001-2020*; and

WHEREAS, the Planning Commission has recommended that City Council find that the proposed use of a portion of East Gate Park by a private entity for a golf facility, subject to certain terms and conditions which encourage young people to learn how to play golf, is substantially in accord with *Vision 2001-2020*, the City's adopted Comprehensive Plan.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Roanoke that this Council, by this resolution, finds that the proposed use of a portion of East Gate Park by a private entity for a golf facility, subject to certain terms and conditions which encourage young people to learn how to play golf, is substantially in accord with *Vision 2001-2020*, the City's adopted Comprehensive Plan.

ATTEST:

City Clerk.

IN THE COUNCIL OF THE CITY OF ROANOKE, VIRGINIA,

SS
5/15/02

AN ORDINANCE accepting the bid for the lease of certain property in East Gate Park for the construction, maintenance and operation of a golf facility for use by the general public for an initial term of fifteen years, subject to certain terms and conditions; authorizing the execution of such lease; and dispensing with the second reading of this ordinance by title.

WHEREAS, the City of Roanoke desires to lease certain property in East Gate Park for the construction, maintenance and operation of a golf facility for use by the general public, for an initial term of fifteen years, subject to certain terms and conditions; and

WHEREAS, the City has, by advertisement published once a week for two consecutive weeks in a paper of general circulation published in the City, publicly invited bids for the lease of certain property in East Gate Park for the construction, maintenance and operation of a golf facility for use by the general public for an initial term of fifteen years, subject to certain terms and conditions; and

WHEREAS, bids for the lease were received and publicly opened at the Council meeting held on May 20, 2002; and

WHEREAS, the bid of _____, to lease certain property in East Gate Park for the construction, maintenance and operation of a golf facility for use by the general public for an initial term of fifteen years, subject to certain terms and conditions, was deemed the most responsive bid made to the City for such lease.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Roanoke as follows:

1. The bid of _____, to lease certain property in East Gate Park for the construction, maintenance and operation of a golf facility for use by the general public for an initial term of fifteen years, subject to certain terms and conditions, is hereby ACCEPTED.

2. The City Manager and City Clerk are hereby authorized, for and on behalf of the City, to execute and attest, respectively, a written lease between the City and _____ for lease of certain property located in East Gate Park for the operation of a golf facility for use by the general public for an initial term of fifteen years, in form approved by the City Attorney, upon certain terms and conditions set forth in the City Manager's letter dated May 20, 2002, to this Council.

3. Pursuant to the provisions of Section 12 of the City Charter, the second reading of this ordinance by title is hereby dispensed with.

4. The City Clerk is directed to forward an attested copy of this ordinance to the successful bidder, _____.

5. Any and all other bids made to the City for the aforesaid lease are hereby REJECTED, and the City Clerk is directed to notify each such bidder and to express to each the City's appreciation for such bid.

ATTEST:

City Clerk.

**CITY OF ROANOKE
PLANNING BUILDING AND DEVELOPMENT**

215 Church Avenue, S.W., Room 166
Roanoke, Virginia 24011
Telephone: (540) 853-1730 Fax: (540) 853-1230
E-mail: planning@ci.roanoke.va.us

May 20, 2002

Architectural Review Board
Board of Zoning Appeals
Planning Commission

Honorable Ralph K. Smith, Mayor
Honorable William H. Carder, Vice Mayor
Honorable William D. Bestpitch, Council Member
Honorable C. Nelson Harris, Council Member
Honorable W. Alvin Hudson, Council Member
Honorable William White, Sr., Council Member
Honorable Linda F. Wyatt, Council Member

Dear Mayor Smith and Members of City Council:

Subject: Request from Cape Town, LC and Steven W. Morris, represented by Daniel F. Layman, Jr., attorney, that two tracts of land located on the southwest side of Roberts Road, S.W., designated as Official Tax No. 1290212 and 1290211, be rezoned from RS-3, Residential Single Family District, to C-1, Office District.

Planning Commission Action:

On March 21, 2002, the Planning Commission held a public hearing on the proposed request. The Planning Commission voted 3-3 (Messrs. Butler, Manetta, and Rife voting against the request and Messrs. Campbell, Chrisman, and Hill voting for it), which pursuant to the Commission's bylaws is a recommendation of denial of the requested action. Planning staff recommended approval of the conditional rezoning advising that residential use of the subject properties was not the most appropriate use due to the impact of the adjacent commercial properties. One resident appeared before the Commission to voice opposition and present a petition signed by residents opposed to the rezoning request (see discussion below).

Background:

A Petition to Rezone the two properties on Roberts Road, S.W. (Official Tax Numbers 1290212 and 1290211) from RS-3, Residential Single Family District, to C-1, Office District, was filed on February 7, 2002. A First Amended Petition to Rezone the subject properties from RS-3, Residential Single Family, to C-1, Office District, was filed on March 6, 2002. A Second Amended Petition to

1. If the property identified by Official Tax No. 1290211 is rezoned as requested, the rezoning will be subject to the condition that, with the exception of ordinary maintenance, the exterior of the residential structure presently located on this lot will remain the same as it is on the date of this petition, without material modification or addition.

The subject lots contain a total of 26,092 square feet or 0.599 acres. The property designated as Official Tax Number 1290212 consists of 11,492 square feet with an average lot width of 68 feet and depth of 169 feet. The property identified as Official Tax Number 1290211 contains 14,600 square feet with an average lot width of 100 feet and depth of 146 feet.

There is a single-family house on each of the subject properties. Petitioners have recently improved each of these houses. There is a row of trees between the first (Official Tax Number 1290212) and second properties (Official Tax Number 1290211) and a row of mature white pine trees between the second subject property and the adjacent lot farther into the neighborhood (Official Tax Number 1290210).

The Petitioners advise that they have talked individually with five residents on Beechwood Drive and five residents on Roberts Road in regard to this petition.

There have been several changes in land use and zoning in this area in past years.

- The tract of land directly across Roberts Road from the subject properties, Official Tax Number 128062 and formerly Moore's Lumber, was rezoned from LM, Light Manufacturing, to C-2, General Commercial, in 2000. In 2001, the property was rezoned from C-2, General Commercial, to LM, Light Manufacturing (conditional), for its current use by Carilion as a laundry and food preparation facility.
- In the area of Southwood, tracts of land were rezoned from RM-2, Residential Multifamily, Medium Density to RPUD, Residential Planned Unit Development. A portion of one such tract adjacent to Roberts Road was changed in 1995 from RM-2, Residential Multifamily, Medium Density to RPUD, Planned Unit Development and C-2, General Commercial.
- In 2000, proffers were amended that were part of a 1988 conditional rezoning from RS-3, Residential Single Family, to C-2, General Commercial, for Piccadilly Square Shopping Center. This amendment allowed for development of a warehouse, accessory to a retail space housed in Piccadilly Square. The tract rezoned in 1988 abuts the rear of three properties on Roberts Road and two on Beechwood Drive.

Additional parking for Piccadilly Square is located on Tax Number 1290117 which fronts on Beechwood Drive.

Planning Commission held a public hearing on the rezoning request on March 21, 2002. Mr. Daniel Layman, Esq., counsel for the petitioner, presented the request. Mrs. Nancy Snodgrass, City Planner, presented the staff report. Staff recommended approval citing the following reasons:

- The proposed change in use with condition is a reasonable development strategy that is consistent with the Comprehensive Plan;
- The residential use of the subject properties has been negatively impacted by the surrounding commercial and light manufacturing land uses, including the Carilion facility parking lot directly across Roberts Road;
- The orientation of the second subject house toward Franklin Road and the tree line between it and the balance of the neighborhood creates a natural division in the layout of the neighborhood; and
- C-1, Office District, permitted uses are appropriate as a transitional use buffer between the intensive commercial uses along Franklin Road and the residential neighborhood.

The Planning Commission opened the meeting for public comment. Mr. Charles Helms of 2951 Roberts Road said he opposed the rezoning request. Mr. Helms, who owns three additional properties in the neighborhood, cited concerns about the following:

- Continually having to fight to maintain his residential neighborhood against the encroachment of commercial uses;
- Further encroachment upon the residential neighborhood which is already impacted by traffic, noise, and trash from nearby commercial and light manufacturing uses;
- Commercial space for offices is available elsewhere and therefore should not be created by tearing up a neighborhood; and
- The two subject properties should remain for residential rental properties.

Planning Commission received from Mr. Helms a petition (attached) from residents on Roberts Road and Beechwood Drive in opposition of the request.

Planning Commission discussion included the following:

- The issue of the availability of commercial office space in the area;
- The long-term impact of this rezoning and whether or not it could open the floodgates for additional rezonings on properties not fronting Franklin Road; and
- A debate of the suggestion that the ideal use of these properties is no longer residential because of surrounding commercial and light manufacturing uses versus maintaining the integrity of the residential neighborhood by defining the commercial boundary to be properties fronting on Franklin Road.

Considerations:

A one-story aluminum sided residential structure built in 1948 and assessed at \$40,200 is located on Official Tax Number 1290212. It may or may not be demolished for future commercial development. The one-story with basement brick veneer residential structure on Official Tax Number 1290211, built in 1945 and assessed at \$54,800, will remain.

The subject lots abut commercially zoned (C-2, General Commercial District) and used properties along the frontage of Franklin Road. The subject lots are also directly across the street (Roberts Road) from property zoned LM, Light Manufacturing-Conditional, which is currently used by Carilion for a 24-hour operation of a laundry and food preparation facility. The two subject properties are directly opposite the parking lot, including an access point, for the Carilion facility. The property abutting the Carilion property to the north is zoned C-1, Office District. Zoning directly west and north of the subject properties is RS-3, Residential Single Family District.

A survey of land uses on Franklin Road between Avenham and Broadway/Wonju indicates the following existing commercial office uses:

- A 1-story (4,000 sq. ft.) mixed office building currently occupied by professionals such as dentist and optometrist;
- A 1-story (3,374 sq. ft.) mixed commercial office building (C-1, Office District);
- A 2-story (8,150 sq. ft.) building currently housing an eye clinic (C-1, Office District);
- A 2-story (4,000 sq. ft. on ground floor and 4,000 sq. ft. on second floor) mixed use building including offices;
- A 1-story (13,567 sq. ft.) building currently housing a medical clinic (C-2, General Commercial District); and
- A 1-story (12,436 sq. ft.) mixed commercial office building currently used as a medical center (C-2, General Commercial District).

Given the adjacent land uses and zoning patterns, this small residential neighborhood is a pocket within commercial and light manufacturing areas. Commercial uses along Franklin Road are intensive and include service stations, clubs, and restaurants. The Carilion laundry and food preparation facility is a three shift, 24-hour operation.

The subject properties have no visual barrier from the Carilion parking lot directly across the street. There are trees but not of a dense evergreen screening nature. These properties are also directly across from the access to the parking lot and are, therefore, impacted by traffic from all 3 shifts, 24 hours a day. In

addition, lights have been added across the front of the Carilion facility. The structure on Official Tax Number 1290211 does not face Roberts Road. Instead it faces Franklin Road. Because of the narrowing configuration of Official Tax Number 120212, the brick structure looks right at the parking lot of the former Club Cobalt.

All houses on Roberts Road beyond the subject properties face Roberts Road with consistent setbacks. Those houses opposite the Carilion facility face the side of the building which is buffered by large dense mature pines, thus screening most of the building from view. These houses are also beyond the access point to the Carilion parking lot so they are not directly affected by the traffic generated by Carilion's employees.

There is a row of mature white pines between the brick house on the second subject property and the next house in the neighborhood. These pines go back about half way down the lot line. These trees, combined with the orientation of the brick structure toward Franklin Road, create a natural division within the layout of the neighborhood.

Because of the orientation of the house on the second subject property, the intensive commercial uses along Franklin Road, and the location of the access point for the Carilion parking lot, residential may not be the most appropriate use of these properties. Because of the row of trees between the subject properties and the rest of the neighborhood and the lessened impact of the commercial and light manufacturing uses on the balance of the residential neighborhood, this may be a logical place for a transitional use.

The intent of the C-1, Office District, is to preserve the existing residential character of neighborhoods and their viability by allowing limited commercial uses in appropriate existing or new structures. The petitioner's request for the C-1 zoning designation allows for a transitional use buffer between the more intensive commercial uses along Franklin Road and the residential neighborhood.

A 10' wide landscape buffer screen would be required on the subject properties where they abut a residential zone to provide a dense, year round visual and noise obstruction. This requirement is part of the development regulations in the zoning code. Lighting for parking areas would be required to be screened from adjacent residential properties.

The City Traffic Engineer foresees no significant traffic impact given the information contained in the rezoning application.

A neighborhood plan, which typically would include a definitive zoning and land use plan for the area, has not been completed. **Vision 2001-2020**, the City's

Comprehensive Plan, contains the following adopted policies and recommendations for land use and development:

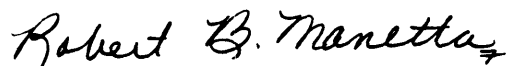
1. Commercial Development: Roanoke will encourage commercial development in appropriate areas. The Franklin Road corridor is shown as a predominantly commercial and industrial land use area.
2. Economic Development: Visual conflicts between residential and commercial uses along commercial strips are common. Redevelopment of areas identified for industrial, commercial or mixed use development should be explored.

Prior to the Planning Commission hearing, one property owner objected to the rezoning request. Mr. Charles Helms of 2951 Roberts Road (Official Tax Number 1290403) who also owns three other properties in the neighborhood (Official Tax Numbers 1290210, 1290207, and 1290303) expressed a number of concerns about the proposal including traffic and parking, lack of need for additional new office space, trash, and preservation of existing residential neighborhood. Mr. Helms has contacted staff by phone on two occasions to discuss the request and express his opposition to the rezoning.

Recommendation:

Planning Commission recommends that City Council deny the rezoning request (Planning Commission vote was 3-3, thereby resulting in a recommendation for denial). Issues considered by the Commission included the transitional nature of the properties; impact of adjacent commercial development; availability of other commercially zoned properties; and the objection of neighborhood residents.

Respectfully submitted,



Robert B. Manetta, Chairman
City of Roanoke Planning Commission

attachment

cc: Darlene L. Burcham, City Manager
Rolanda Johnson, Assistant City Manager for Community Development
William M. Hackworth, City Attorney
Steven J. Talevi, Assistant City Attorney
Daniel F. Layman, Attorney for the Petitioner

VIRGINIA:

IN THE COUNCIL OF THE CITY OF ROANOKE

In re:	Rezoning of Two Tracts of Land)	SECOND
	Located on the Southwest Side of)	AMENDED
	Roberts Road, comprising)	PETITION
	(1) the lot bearing Official Tax No.)	TO REZONE
	1290212 and (2) the lot bearing)	OF
	bearing Official Tax No.)	CAPE TOWN, LC and
	1290211, from RS-3, Residential)	STEVEN W. MORRIS
	Single-Family District, to C-1,)	
	Office District)	

TO THE HONORABLE MAYOR AND MEMBERS OF THE COUNCIL OF THE CITY OF ROANOKE:

(1) Petitioners Cape Town, LC and Steven W. Morris (who is a member in Cape Town, LC) are the owners of two tracts of land in the City of Roanoke located on the southwest side of Roberts Road, near its intersection with Franklin Road, SW, bearing, respectively, City of Roanoke Official Tax Nos. 1290212 and 1290211. A portion of City Appraisal Map Number 129 showing these parcels is attached to this petition as Exhibit A.

(2) Both of these lots are presently zoned RS-3, Residential Single-Family District.

(3) Pursuant to Section 36.1-690, Code of the City of Roanoke (1979), as amended, petitioner requests that the above-described parcels be rezoned from RS-3, Residential Single-Family District, to C-1, Office District.

(4) The subject lots are just behind (northwest of) commercially-zoned and -used properties along the Franklin Road frontage and just across Roberts Road from a large commercially-zoned tract now owned by Carilion Services, Inc., which is the site of Carilion's new laundry. Both lots are substantially impacted by these adjacent commercial uses, and their desirability for residential use is accordingly reduced. Petitioners believe that the requested zoning change will afford an opportunity for use of these lots in a manner more consistent with their immediate surroundings and will at the same time allow them to serve as a buffer between the adjacent intensive commercial uses and the remainder of the residential neighborhood to the northwest.

(5) Presently there is a single-family home on each of the lots. Petitioners have substantially improved each of these homes. Attached to this petition as Exhibit B are plats of each lot showing the existing homes and the drives and parking areas serving each.

(6) Petitioner Steven W. Morris hereby proffers and agrees that if the property identified by Official Tax No. 1290211 is rezoned as requested, the rezoning will be subject to, and the petitioner will abide by, the condition that, with the exception of ordinary maintenance, the exterior of the residential structure presently located on this lot will remain the same as it is in on the date of this petition, without material exterior modification or addition.

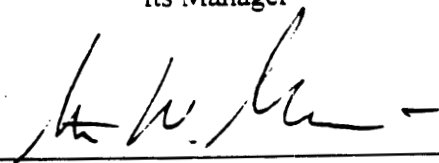
(7) Attached to this petition as Exhibit C is a list of the names and addresses of the owners of all lots immediately adjacent to or across a street from the property to be rezoned, together with the Official Tax Number of each lot.

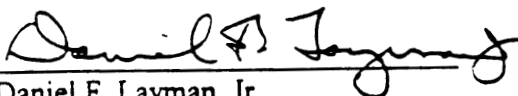
WHEREFORE, petitioners request that the parcels bearing City of Roanoke Official Tax Nos. 1290211 and 1290212 be rezoned from RS-3 to C-1, in accordance with the provisions of the Zoning Ordinance of the City of Roanoke.

Respectfully submitted by petitioners this ____ day of March, 2002.

CAPE TOWN, LC

By 
Its Manager

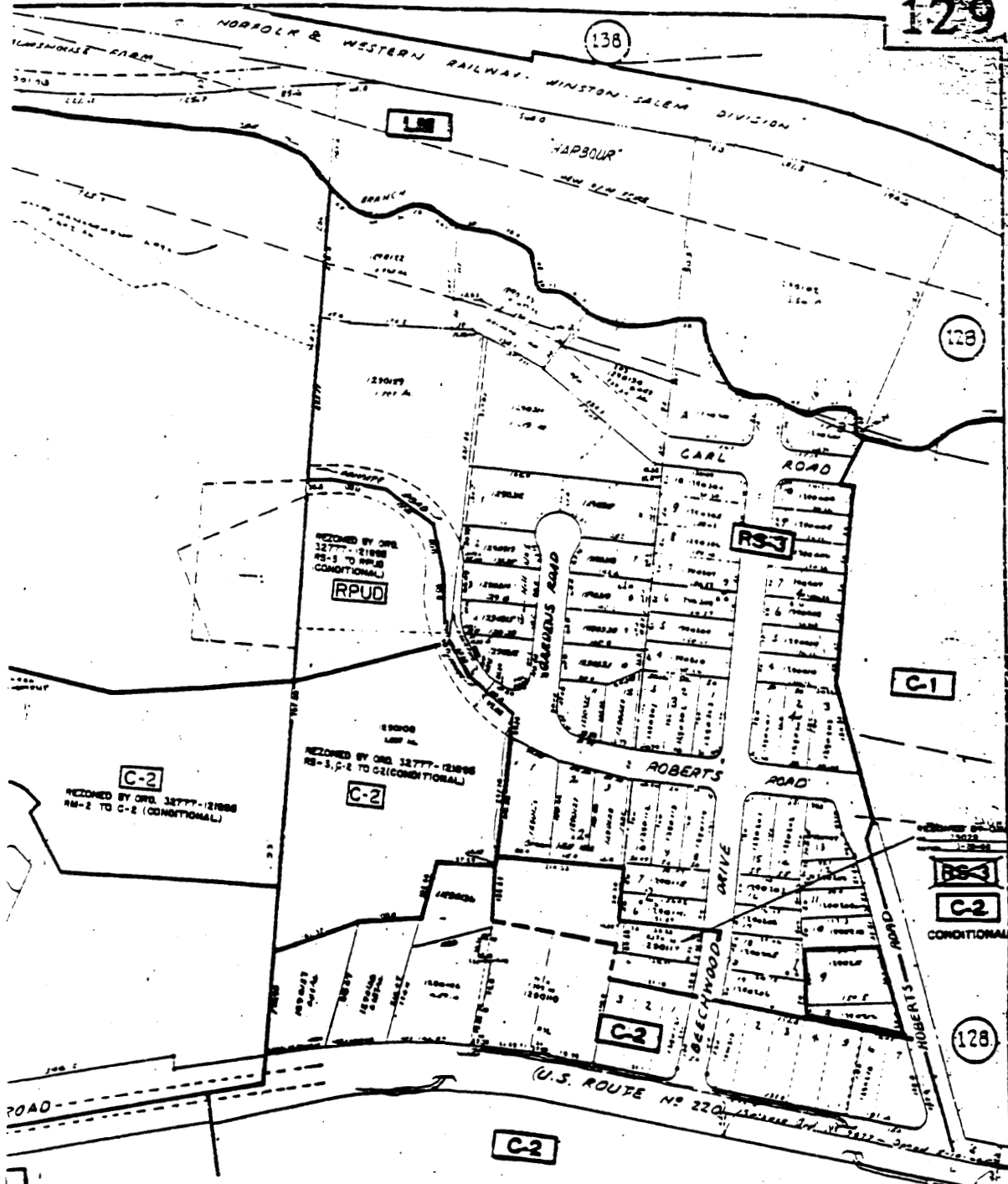

Steven W. Morris



Daniel F. Layman, Jr.
Woods, Rogers & Hazlegrove, P.L.C.
P. O. Box 14125
Roanoke, VA 24038-4125
(703) 983-7653

Of Counsel for the Petitioners

129



354

NOTE:
 B.G. BEECHWOOD GARDENS 36.45
 G.H. GREEN HILL 181.16 36 42.20
 FRANKLIN ROAD ACRES
 PHILIPPE K. & BETTY V. PHILLIPS 15.00 36
 ELEANOR C. HARTMAN, D.D., 15.00 36
 ALL RETIREMENT CREDIT 15.00 36 44.40 36
 A.L. 15.00 36 44.40 36 15.00 36 15.00 36

NOTES:
 The location of features and values are shown on this map
 as far as their existence and location were known at the
 time of the preparation of this map. Nothing on this map
 shall be construed as a guarantee that any fact or
 value are in the nature of a statement of fact or a
 statement of value.

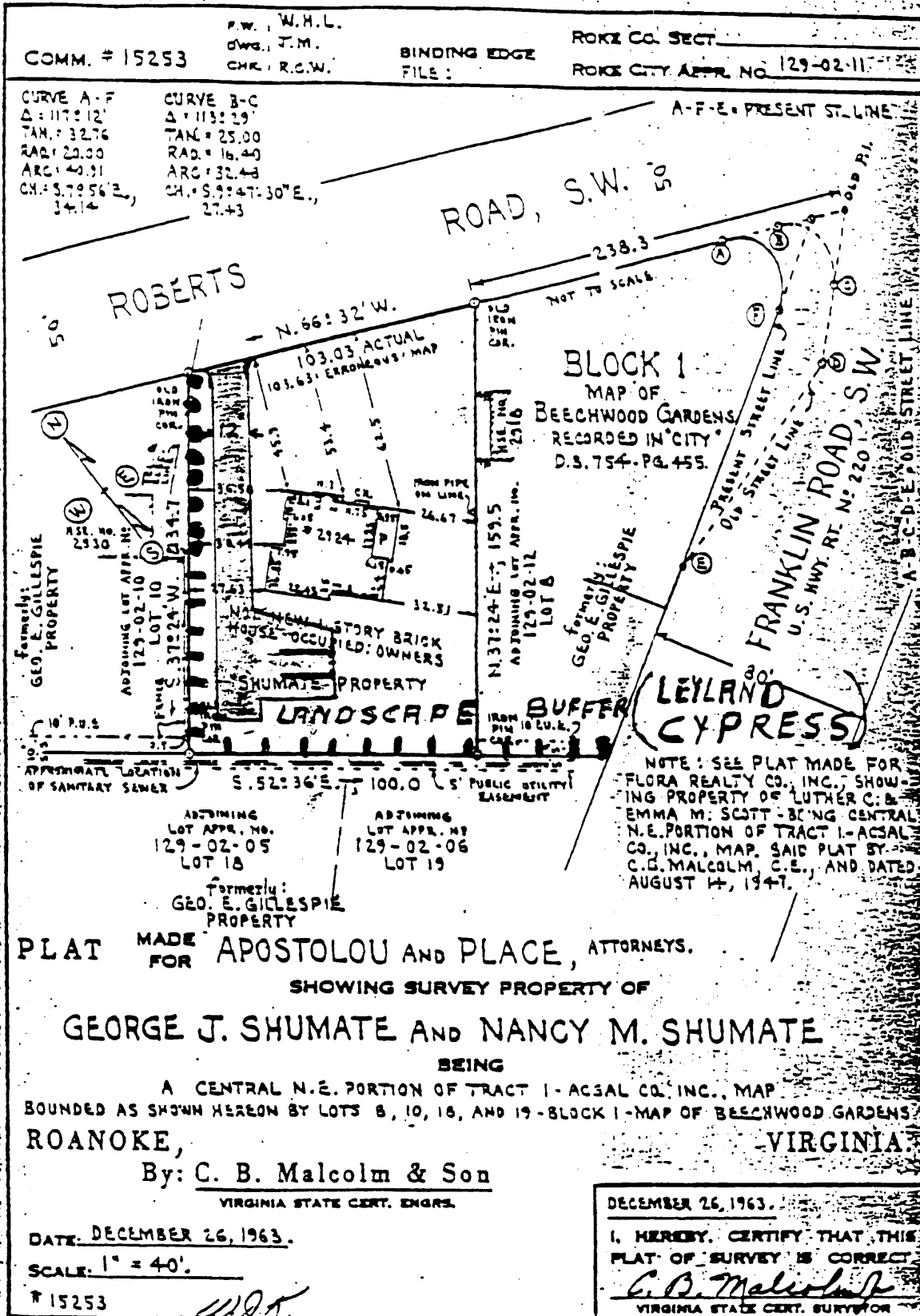
ZONING MAP CITY OF ROANOKE, VA SHEET NO. 129

OFFICE OF THE CITY ENGINEER

SHEET NO.
 SECTIONAL 1976 LONG MAP
 CITY OF ROANOKE
 AS AMENDED TO 4-2-97

Exhibit
 A

1149 330



129-02-11

Exhibit B

LEGEND

- RON PIN SET
- RON PIN FOUND

THIS IS TO CERTIFY THAT AN ACTUAL FIELD SURVEY OF THE PREMISES SHOWN HEREON HAS BEEN PERFORMED UNDER MY SUPERVISION; THAT ALL IMPROVEMENTS AND VISIBLE EVIDENCE OF EASEMENTS ARE SHOWN HEREON, AND THAT THERE ARE NO ENCROACHMENTS BY IMPROVEMENTS EITHER FROM ADJOINING PREMISES OR FROM SUBJECT PREMISES OTHER THAN SHOWN HEREON. THIS SURVEY WAS PERFORMED WITHOUT THE BENEFIT OF A TITLE REPORT AND IS SUBJECT TO INFORMATION WHICH MAY BE DISCLOSED BY SUCH. PROPERTY IS IN F.E.M.A. DEFINED ZONE X UNSHADED.

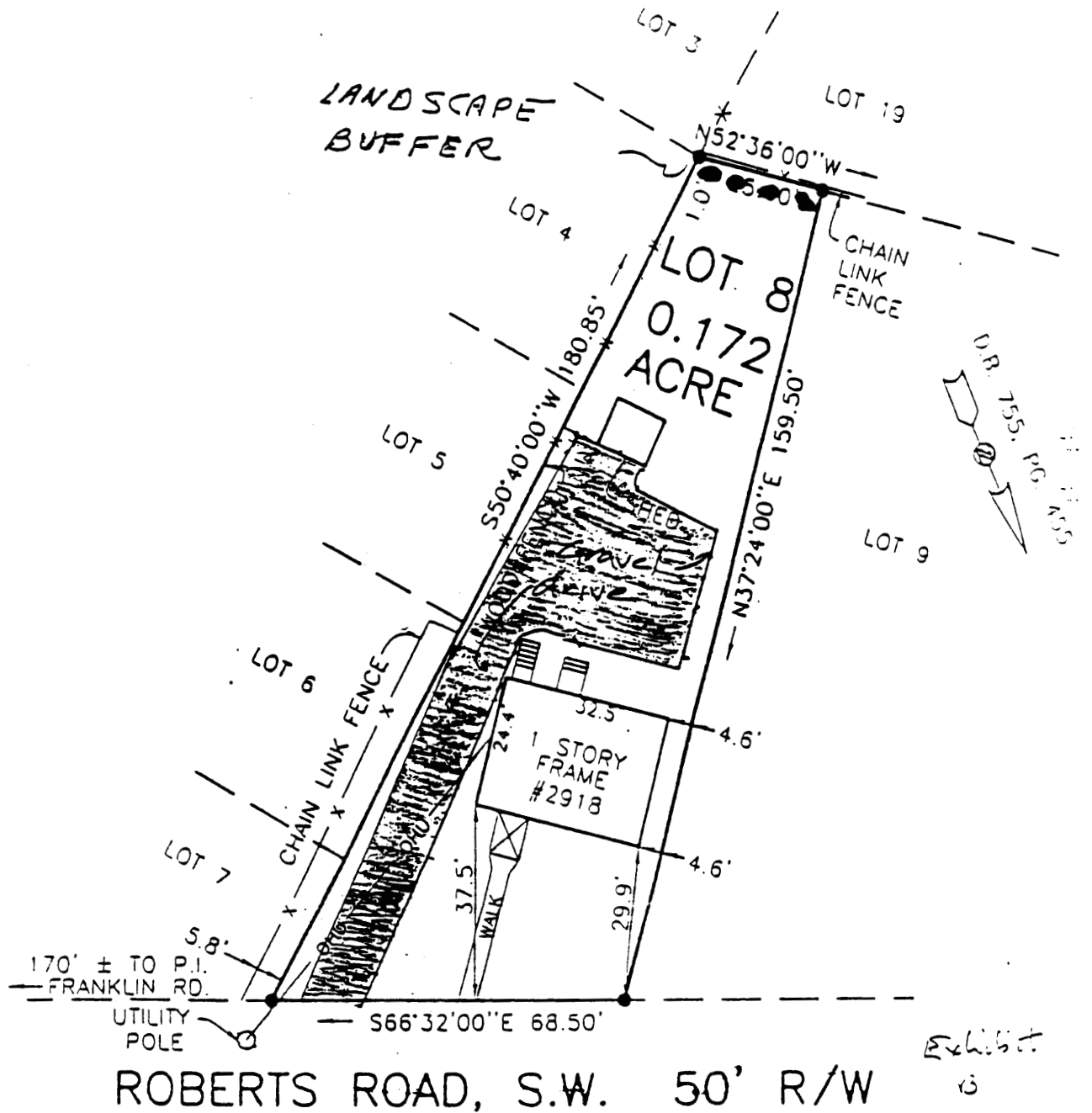


Exhibit
13

EXHIBIT C

Petition of Cape Town, LC and Steven W. Morris

Adjacent Property Owners

<u>Tax Number</u>	<u>Owner</u>
1290218	Horace Fralin LLC P. O. Box 20069 Roanoke, VA 24018
1290213	Shih Lo Hsing et al. 410 Willow Oak Dr. Roanoke, VA 24014
1290206	Cynthia A. Mason 915 Beechwood Dr. Roanoke, VA 24014
1290205	John Hall 919 Beechwood Dr. Roanoke, VA 24014
1290210	Charles B. and Christine J. Helms 2951 Roberts Road Roanoke, VA 24014
1280602	Carilion Services, Inc. 213 South Jefferson St. Roanoke, VA 24011

The People listed below are against
 rezoning 2918 + 2924 Roberts Road, S.W.

1 = James E. Freeman

2938 Roberts Rd. Roanoke, Va. 24014

2 = J. J. Hobbie Jr

2952 Roberts Road, Roanoke, Va. 24014

3 = John J. Jones

2960 Roberts Road, Roanoke, Va. 24014

4 = Allen Seely 301 Roberts Rd. S.W.

5 = Anne Seely 301 Roberts Rd. S.W. 24014

6 = Kenneth B. Giddens 302 Roberts Rd. S.W.

7 = Marshall R. Giddens, Jr 302 Roberts Rd. S.W.

8 = Alton A. Rain 927 Buchanan Dr. S.W.

9 = Alton A. Rain 927 Buchanan Dr. S.W.

10 = Charles B. Helms - 2951 Roberts Rd. S.W.

11 = Christine J. Helms - 2951 Roberts Rd. S.W.

13. Mary Adams
2955 Roberts Rd SW Rk, Va. 24014
14. Chuck E Adams III
2955 Roberts Rd SW Rk, Va. 24014
15. Joan Phelps
2956 Roberts Rd Rk Kennock Rd SW 4
16. Susan Phelps
2956 Roberts Rd.
17. Kristin Phelps
2956 Roberts Rd
18. Nancy Grainger
2959 Roberts Rd - Kennock, Va 24014
19. Timie Stevens
928 Beechwood Dr.
20. Mike Gann
923 Beechwood Dr Kennock Va. 24014
21. Chas McGinn
923 Beechwood Dr Kennock VA. 24014
22. Nancy Cagle
924 Beechwood Dr SW Kennock, VA
23. Scott Terry
924 Beechwood Dr SW Kennock VA.
24. Jennie Jackson-Reed
919 Beechwood Dr SW Rk VA
25. Michael Reed
919 Beechwood Dr SW Rk VA
26. Charles B. Helms
2930 Roberts Rd - Owner, Rented Property

27. Connet Fisher
1002 Gardens Rd
28. Brenda S. Fisher
1002 GARDENS RD, SW
29. ERIC SP-ROUSE
1002 GARDENS RD SW
30. Thomas Smith
3014 Roberts Rd. S.W.
31. Henry Smith
3014 Roberts Rd. S.W.
32. Emma T. Mason
1015 Beechwood Dr.
33. Emma T. Mason
1015 BEECHWOOD
34. Emma T. Mason
1015 BEECHWOOD
35. Emma T. Mason
1015 Beechwood Dr.
36. Heather Rush
1019 Beechwood
37. ERIC Blankinsop
1019 Beechwood Dr.
38. Pam Gausman
1015 Beechwood
39. Rebecca Hawkins
3002 Roberts Rd. SW
40. Maria Harris
3002 Roberts Rd SW

41. Paul Harris

3000 Roberts Rd. S.W.

42- Mrs George Hartman -
920 Beechwood Dr.

43. Mr. & Mrs. [unclear]
3000 Roberts Rd.

44- [unclear]
3000 Roberts Rd.

45. Harry Roberts
3011 ROBERTS RD. S.W.

46- DEBORAH ROBERTS
3011 ROBERTS RD. S.W.

47. Len Richmond
3012 Roberts Rd

48- Donald [unclear]
3017 Roberts Rd.

49- Ruth [unclear]
3020 Roberts Rd. S.W.

50- Don [unclear]
3020 Roberts Rd. S.W.

51- Edith [unclear]
3020 Roberts Rd. S.W.

52- [unclear]
1023 Beechwood Drive S.W.

53- Carl Wayne Motkey
1023 Beechwood Drive, S.W.



WILLIAM M. HACKWORTH
CITY ATTORNEY

CITY OF ROANOKE
OFFICE OF CITY ATTORNEY
464 MUNICIPAL BUILDING
215 CHURCH AVENUE, SW
ROANOKE, VIRGINIA 24011-1595

TELEPHONE: 540-853-2431
FAX: 540-853-1221
E-MAIL: cityatty@ci.roanoke.va.us

ELIZABETH K. DILLON
STEVEN J. TALEVI
GARY E. TEGENKAMP
DAVID L. COLLINS
CAROLYN H. FURROW
ASSISTANT CITY ATTORNEYS

May 20, 2002

The Honorable Mayor and Members
of City Council
Roanoke, Virginia

Re: Rezoning - Cape Town, L.C., and Steven W. Morris

Dear Mayor Smith and Members of Council:

This is in regard to the request of Cape Town, L.C. and Steven W. Morris, member of Cape Town, L.C., to rezone a tract of land in the City, Official Tax Nos. 1290211 and 1290212, from RS-3, Residential Single Family District, to C-1, Office District, subject to proffers. A petition has been filed with the City Clerk by citizens opposed to the rezoning. It is my opinion that a sufficient number of signatures has been set out in this petition to invoke the rule that requires five (5) affirmative votes to adopt this rezoning.

Section 62(5) of the Roanoke City Charter provides with reference to amendments to the City's Zoning Map, in pertinent part, as follows:

Such regulations, restrictions, and boundaries may from time to time be amended, supplemented, changed, modified or repealed. In case, however, of a protest against such change signed by the owners of twenty per centum or more either of the area of the lots included in each proposed change, or of those immediately adjacent in the rear thereof, or of those directly opposite thereto, such amendment shall not become effective except by the favorable vote of five-sevenths of all the members of the Council.

According to information provided by the petitioners, there are eight (8) parcels in the City which can be construed as being included in the proposed rezoning, adjacent to the rear of, or opposite, the area proposed to be rezoned:

CITY OF ROANOKE

Owners:

Tax Map No.

Cape Town, LC
Cape Town, LC

1290211
1290212

Honorable Mayor and Members
of City Council
May 20, 2002

Page 2

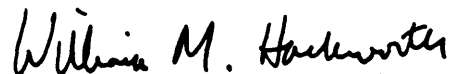
	Horace Fralin, LLC	1290218
	Shi Lo Hsing, Christina Hsing, Peter and Mina Hsing	1290213
(signed)	Cynthia A. Mason	1290206
	John Hall	1290205
(signed)	Charles and Christine J. Helms	1290210
	Carilion Services, Inc.	1280602

All owners of the two (2) lots as identified by the Petitioner, Ms. Cynthia A. Mason (Official Tax No. 1290206) and Charles and Christine J. Helms (Official Tax No. 1290210), have signed a petition opposing the rezoning. The owners of the subject lots, as well as the owners of Official Tax Nos. 1290218 (Horace Fralin, LLC), 1290213 (Shi Lo Hsing, Christina Hsing, Peter and Mina Hsing), 1290205 (John Hall), and 1280602 (Carilion Services, Inc.), did not sign the petition opposed to the rezoning.

Owners of only two (2) of the eight (8) properties are required to sign the petition in order to trigger the five vote rule. Under the circumstances, I believe that the provisions of §62(5) have been met in that all of the owners of two (2) of the subject eight (8) properties have signed the petition. Accordingly, five-sevenths of all the members of the Council will be needed to concur in the rezoning, if the rezoning is to be effective.

I would be pleased to respond to any questions that the members of Council may have with regard to this matter.

Very truly yours,



William M. Hackworth
City Attorney

WMH/SJT:s

cc: Darlene L. Burcham, City Manager
Robert K. Bengtson, Director of Public Works
Wanda Reed, Acting Chief, Planning & Community Development
Evelyn Dorsey, Zoning Administrator
Daniel F. Layman, Jr., Attorney for the Petitioner
Steven W. Morris, Member, Cape Town, LC

ST

IN THE COUNCIL OF THE CITY OF ROANOKE, VIRGINIA,

AN ORDINANCE to amend §36.1-3, Code of the City of Roanoke (1979), as amended, and Sheet No. 129, Sectional 1976 Zone Map, City of Roanoke, to rezone certain property within the City, subject to certain conditions proffered by the applicant; and dispensing with the second reading of this ordinance.

WHEREAS, Cape Town, L.C. and Steven W. Morris, have made application to the Council of the City of Roanoke to have the hereinafter described property rezoned from RS-3, Residential Single-Family District, to C-1, Office District, subject to certain conditions proffered by the applicant; and

WHEREAS, the City Planning Commission, which after giving proper notice to all concerned as required by §36.1-693, Code of the City of Roanoke (1979), as amended, and after conducting a public hearing on the matter, has made its recommendation to Council; and

WHEREAS, a public hearing was held by City Council on said application at its meeting on May 20, 2002, after due and timely notice thereof as required by §36.1-693, Code of the City of Roanoke (1979), as amended, at which hearing all parties in interest and citizens were given an opportunity to be heard, both for and against the proposed rezoning; and

WHEREAS, this Council, after considering the aforesaid application, the recommendation made to the Council by the Planning Commission, the City's Comprehensive Plan, and the matters presented at the public hearing, is of the opinion that the hereinafter described property should be rezoned as herein provided.

THEREFORE, BE IT ORDAINED by the Council of the City of Roanoke that:

1. Section 36.1-3, Code of the City of Roanoke (1979), as amended, and Sheet No. 129 of the Sectional 1976 Zone Map, City of Roanoke, be amended in the following particular and no other:

That two tracts of land lying in the City of Roanoke, located on the southwest side of Roberts Road, S.W., and designated on Sheet No. 129 of the Sectional 1976 Zone Map, City of Roanoke, as Official Tax Nos. 1290211 and 1290212, be, and are hereby rezoned from RS-3, Residential Single Family District, to C-1, Office District, subject to the proffers contained in the Second Amended Petition filed in the Office of the City Clerk on March 12, 2002, and that Sheet No. 129 of the Zone Map be changed in this respect.

2. Pursuant to the provisions of Section 12 of the City Charter, the second reading of this ordinance by title is hereby dispensed with.

ATTEST:

City Clerk.

CITY OF ROANOKE
PLANNING BUILDING AND DEVELOPMENT

215 Church Avenue, S.W., Room 166
Roanoke, Virginia 24011
Telephone: (540) 853-1730 Fax: (540) 853-1230
E-mail: planning@ci.roanoke.va.us

Architectural Review Board
Board of Zoning Appeals
Planning Commission

May 20, 2002

Honorable Ralph K. Smith, Mayor
Honorable William H. Carder, Vice Mayor
Honorable William D. Bestpitch, Council Member
Honorable C. Nelson Harris, Council Member
Honorable W. Alvin Hudson, Council Member
Honorable William White, Sr., Council Member
Honorable Linda F. Wyatt, Council Member

Dear Mayor Smith and Members of City Council:

Subject: Request from the City of Roanoke, Calvin W. and Mary C. Powers and Theodore J. and Judy P. Sutton, that tract of land lying generally west of Courtland Avenue, north of Orange Avenue and south of Sycamore Avenue, comprising approximately 24.5 acres, more or less, and designated more specifically as Official Tax Nos. 3070301 through 3070310, inclusive; 3070313 through 3070316, inclusive; 2041816 and 2041817 currently zoned LM, Light Manufacturing District; and Official Tax Nos. 3070501, 3070318 and 3070319, currently zoned C-2, General Commercial District, be rezoned to C-3, Central Business District.

Planning Commission Action:

Planning Commission public hearing was held on Thursday, April 18, 2002. By a vote of 4-3 (Messrs. Dowe, Hill, Manetta and Rife voting for the motion; Messrs. Butler, Campbell and Chrisman voting against the motion), the Commission recommended the rezoning request. Mr. Dan Layman, attorney representing Farrell properties and Berglund Automotive, appeared before the Commission requesting a continuance until a traffic study for the project was completed.

Background:

On May 17, 2001, City Council authorized the City Manager to negotiate and acquire properties in the area north of the Civic Center to serve as a location for a new

Manager to file a petition to rezone properties for the project. A petition was subsequently filed on March 12, 2002. No conditions are being proffered.

Jim Evans, Director Of Civic Facilities, and Charles Anderson, City Architect, presented the request to the Planning Commission. Mr. Dan Layman, attorney representing Farrell properties and Berglund Automotive, appeared before the Commission and expressed concern that the traffic study had not been completed. Mr. Layman requested that the Commission table the decision on the rezoning until the traffic study is completed. Mr. Anderson indicated that the traffic study was underway and would be completed by August. There was considerable discussion about coordinating schedules to avoid having a situation where there are large events at the Civic Center and the stadium/amphitheater at the same time.

Considerations:

The current zoning (see Exhibit A) of most of the subject properties is LM, Light Manufacturing District, which does not provide for this type of facility. A few parcels are zoned C-2, General Commercial District, which could permit a stadium facility. A rezoning of the property to C-3, Central Business District is requested. The existing Civic Center, a companion facility, is zoned C-3 and will provide additional parking for the new facility. Zoning to the east of the site is C-2, to the west is RM-2, to the south is C-3, and to the north is LM.

Existing land uses of the properties to be rezoned (See Exhibit B) are mostly industrial, including equipment and materials storage and parking. The largest parcels are part of the city's public works complex and are mostly vacant. Commercial uses surround the site. The new use of the property is a stadium/amphitheater with up to 8,000 seats. The conceptual layout of the project was submitted with the attached petition. Approximately 700-900 parking spaces would be provided around the stadium/amphitheater structure, with overflow parking at the Civic Center. Given the nature of the surrounding land uses, the impact on adjacent properties is expected to be minimal. The facility should enhance additional development opportunities in the surrounding area.

From an urban design standpoint, this project would strengthen the link between downtown and the Williamson Road area. The project would provide an infill project on underutilized land, thus providing continuity and a destination between these areas. The project also has the potential to provide better pedestrian linkages between the areas. Williamson Road is a linear commercial area that needs "anchor points" and efforts have been made to develop this anchor point by defining the gateway at Orange Avenue. The Williamson Road Corridor plan (Hill Studio, 1997) designated portions of the Public Works Service Center and the Civic Mall as an underutilized area and recommended redevelopment to serve as a southern anchor for the corridor. Use of this site adjacent to the Civic Center also achieves a desired grouping of complementary entertainment facilities.

Because of the site's excellent transportation access and nature of the surrounding land uses, the site is appropriate for an intense commercial use. Preliminary planning

indicates that existing water, sewer, and storm water infrastructure will support the stadium/amphitheater. An on-site stormwater management system will be developed as part of site planning.

A traffic study is underway to identify the best options for traffic management and ingress/egress to the site. Meetings with adjacent property owners to discuss traffic management are planned in the future as the study proceeds.

The site has excellent opportunities for pedestrian linkages. The facility would be located one mile north of the City Market, thereby making pedestrian access to the downtown core possible. A planned segment of the Lick Run Greenway runs near the site and could provide pedestrian access to downtown. A planned pedestrian overpass across Orange Avenue also will enhance pedestrian access to both the Civic Center parking and to the downtown core. Finally, pedestrian improvements along Williamson Road were recently completed as part of the Williamson Road Corridor improvement project.

At least 700 parking spaces are proposed on site, which should be adequate for most events. For larger events, there will be access to the Civic Center parking lot via a pedestrian overpass crossing Orange Avenue. Because of its close proximity to downtown, shuttle service to downtown parking garages is also viable. It is expected that on-site parking, Civic Center parking, and shuttles to parking garages will adequately serve parking needs. The C-3 district has no minimum parking requirements.

The City's Comprehensive Plan, *Vision 2001-2020*, recommends that Roanoke develop, maintain and manage recreation facilities that enhance the City and the region's quality of life. The plan also recommends the redevelopment of underutilized industrial sites and continued investment in the downtown to serve the region's central business district with opportunities for downtown living, office space, retail and cultural and entertainment attractions. The comprehensive plan supports the rezoning of the site through the following policies:

- Providing opportunities in downtown for cultural and entertainment attractions
- Evaluating and encouraging redevelopment of underutilized commercial and industrial sites
- Encouraging commercial development in appropriate areas such as key intersections and existing commercial centers
- Developing significant regional attractions
- Encouraging shared parking

In addition, the comprehensive plan specifically designates the area as a future stadium site.

Recommendation:

By a vote of 4-3 (Messrs. Rife, Dowe, Hill and Manetta voting for the motion and Messrs. Butler, Campbell and Chrisman voting against the motion), the Commission recommends approval of the rezoning request. The development of the property for a stadium/ amphitheater will encourage economic development of the area, provide a regional entertainment attraction near downtown, redevelop an underutilized area, and incorporate shared parking. In addition, development of this site will also create a better linkage between downtown and the Williamson Road area and supports an "entertainment complex" approach by grouping with the existing Civic Center.

Respectfully submitted,

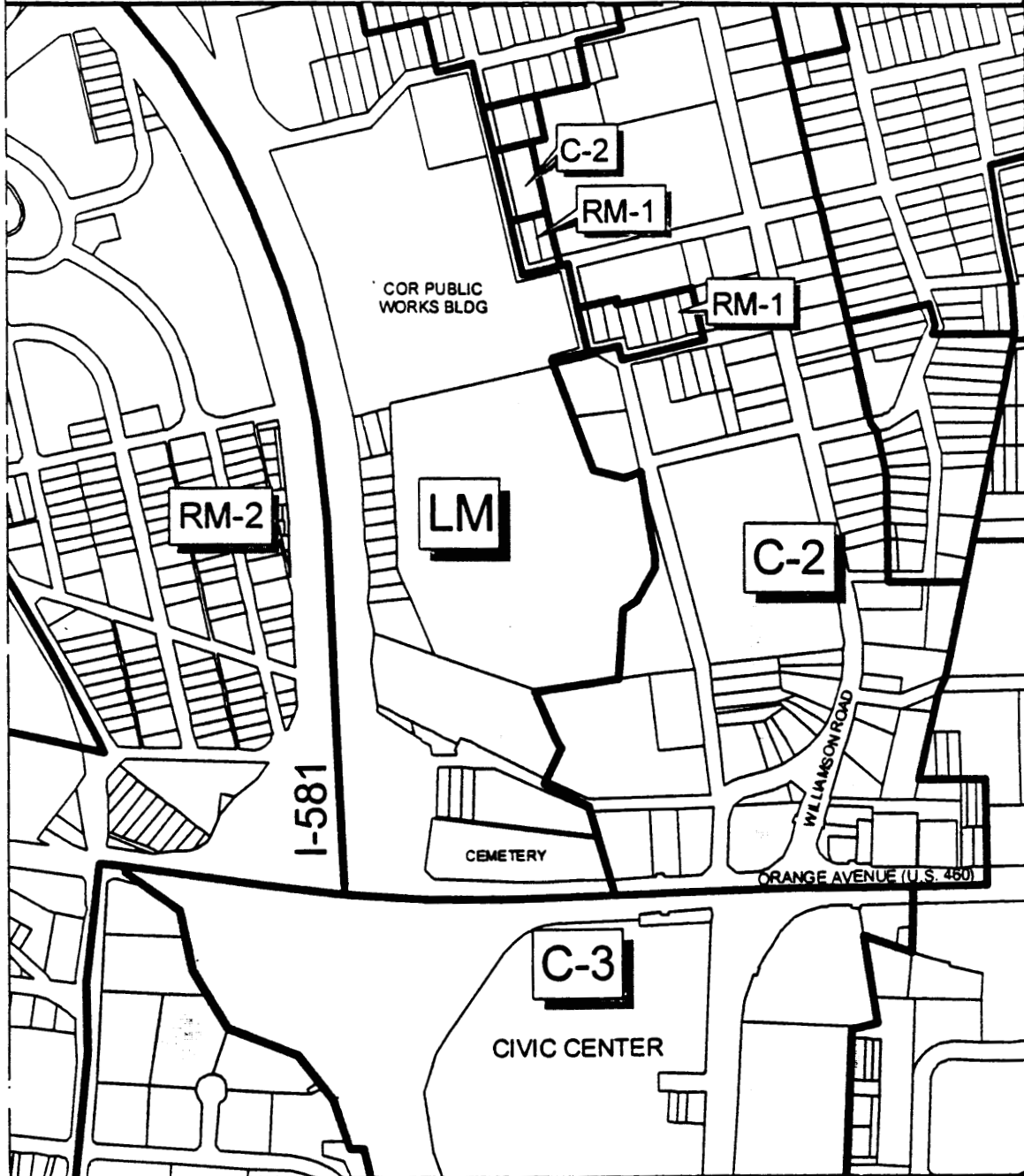
A handwritten signature in black ink, reading "Robert B. Manetta". The signature is written in a cursive, flowing style.

Robert B. Manetta, Chairman
City of Roanoke Planning Commission

CC:mpf
attachments

cc: Darlene Burcham, City Manager
Rolanda Johnson, Assistant City Manager for Community Development
William M. Hackworth, City Attorney
Steven J. Talevi, Assistant City Attorney
Calvin and Mary Powers, Petitioner
Theodore and Judy Sutton, Petitioner

EXISTING ZONING



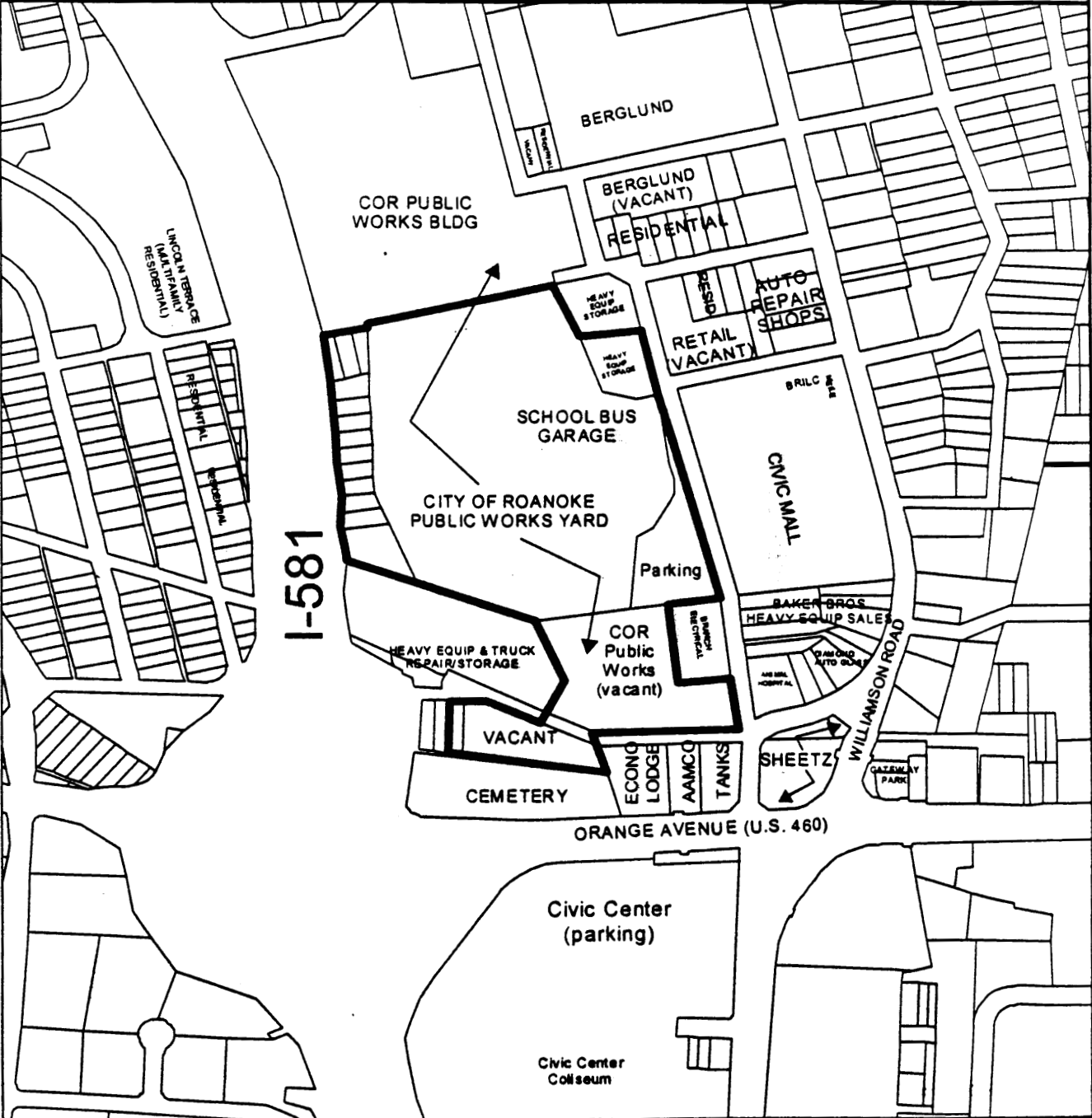
City of Roanoke

Planning Building and Development

April 2, 2002

0 200 400 600 Feet

EXISTING LAND USES



City of Roanoke

Planning Building and Development

April 2, 2002

0 200 400 600 Feet

IN THE COUNCIL OF THE CITY OF ROANOKE, VIRGINIA

IN RE:

Rezoning of tracts of land lying generally west of Courtland Avenue, north of Orange Avenue and south of Sycamore Avenue, comprising approximately 24.5 acres, more or less and designated more specifically as Official Tax Numbers 3070301, 3070302, 3070303, 3070304, 3070305, 3070306, 3070307, 3070308, 3070309, 3070310, 3070313, 3070314, 3070315, 3070316, 2041816, 2041817 from LM, Light Manufacturing District and Tax Numbers 3070501, 3070318 and 3070319 from C-2, General Commercial District, to C-3, Central Business District.

TO THE HONORABLE MAYOR AND MEMBERS OF THE COUNCIL OF THE CITY OF ROANOKE:

The Petitioner, City of Roanoke, Virginia, owns parcels of land in the City of Roanoke containing 23 acres, more or less, designated as Official City Tax Numbers 3070301, 3070302, 3070303, 3070304, 3070305, 3070306, 3070307, 3070308, 3070309, 3070310, 3070313, 3070314, 3070315, 3070316, 2041816, 2041817, 3070501, and 3070318 located generally west of Courtland Road, north of Orange Avenue, and south of Sycamore Avenue. The Petitioners, Calvin W. and Mary C. Powers and Theodore J. and Judy P. Sutton, own a parcel of land in the City of Roanoke designated as Official City Tax Number 3070319, and containing 1.5 acres, more or less, in the same general location. Tax Numbers 3070301, 3070302, 3070303, 3070304, 3070305, 3070306, 3070307, 3070308, 3070309, 3070310, 3070313, 3070314, 3070315, 3070316, 2041816, 2041817 are currently zoned LM, Light Manufacturing District. Tax Numbers 3070501, 3070318 and 3070319 are currently zoned C-2, General Commercial District. A map of the property to be rezoned is attached as Exhibit A. A concept plan for proposed development of the properties is attached as Exhibit B.

Pursuant to Section 36.1-690, Code of the City of Roanoke (1979), as amended, the Petitioners request that the said properties be rezoned from LM, Light Manufacturing District, and C-2, General Commercial District to C-3, Central Business District, for the purpose of constructing a municipal stadium and amphitheater facility to be used in conjunction with the existing Roanoke Civic Center.

The Petitioners believe the rezoning of the said tract of land will further the intent and purposes of the City's Zoning Ordinance and its comprehensive plan, in that it will redevelop an underutilized industrial area, provide increased recreational and entertainment opportunities for

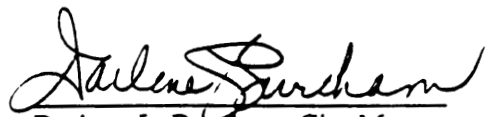
the City and the region, and provide increased economic development investment in the downtown area.

Attached as Exhibit C are the names, addresses and tax numbers of the owner or owners of all lots or property immediately adjacent to and immediately across a street or road from the property to be rezoned.

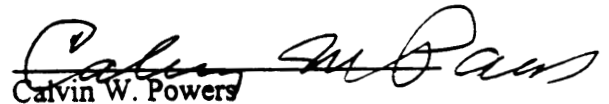
WHEREFORE, the Petitioners request that the above-described tracts be rezoned as requested in accordance with the provisions of the Zoning Ordinance of the City of Roanoke.

Submitted this 12th day of March, 2002.

Respectfully,



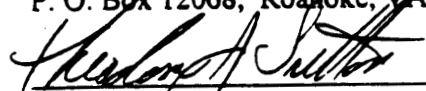
Darlene L. Burcham, City Manager
City of Roanoke, Virginia
215 Church Avenue, S. W., Room 364
Roanoke, VA 24011
(540) 853-2333



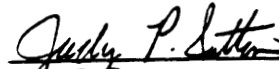
Calvin W. Powers
P. O. Box 12068, Roanoke, VA 24022



Mary C. Powers
P. O. Box 12068, Roanoke, VA 24022



Theodore J. Sutton
P. O. Box 12068, Roanoke, VA 24022



Judy P. Sutton
P. O. Box 12068, Roanoke, VA 24022

EXHIBIT A

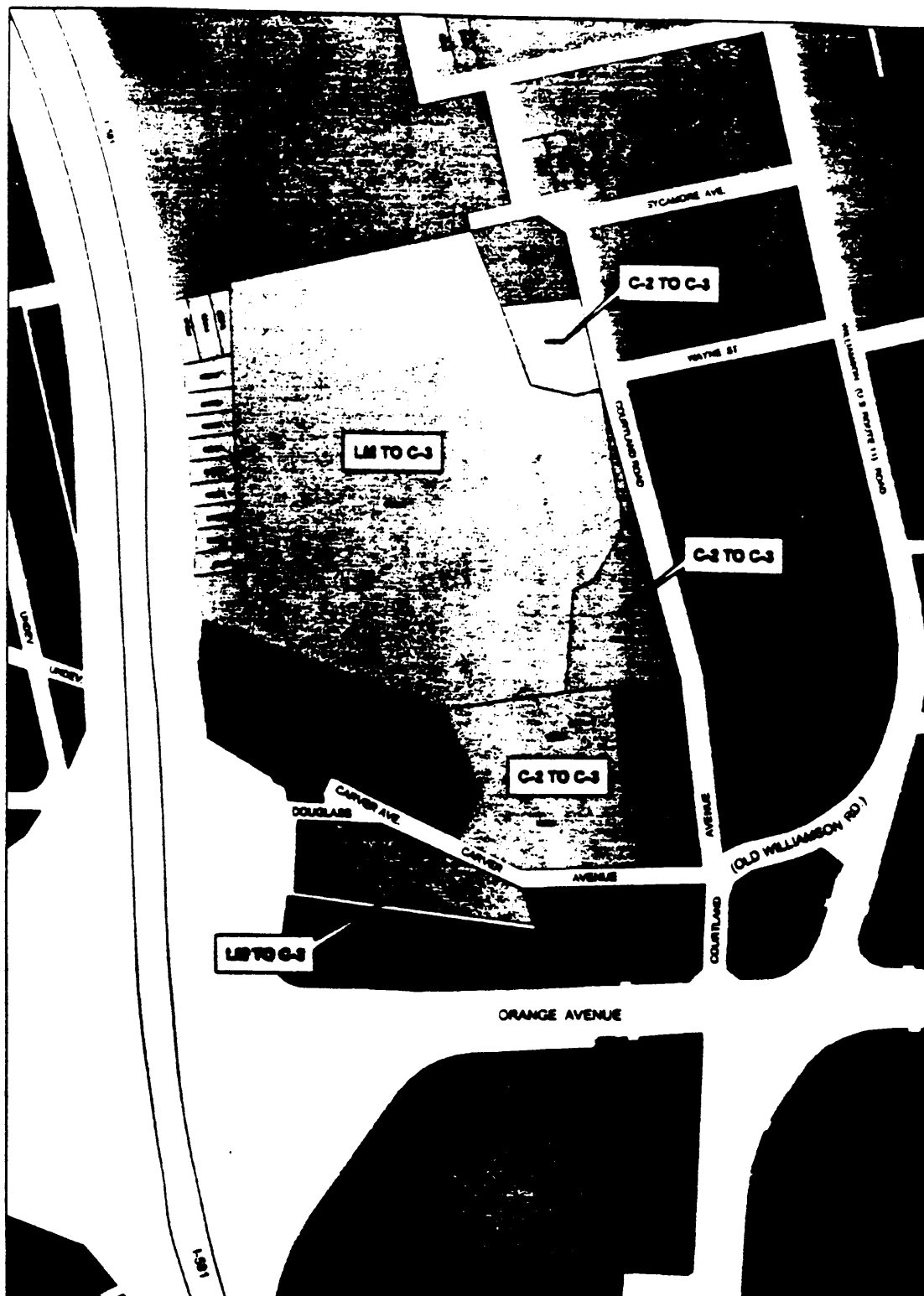


EXHIBIT B

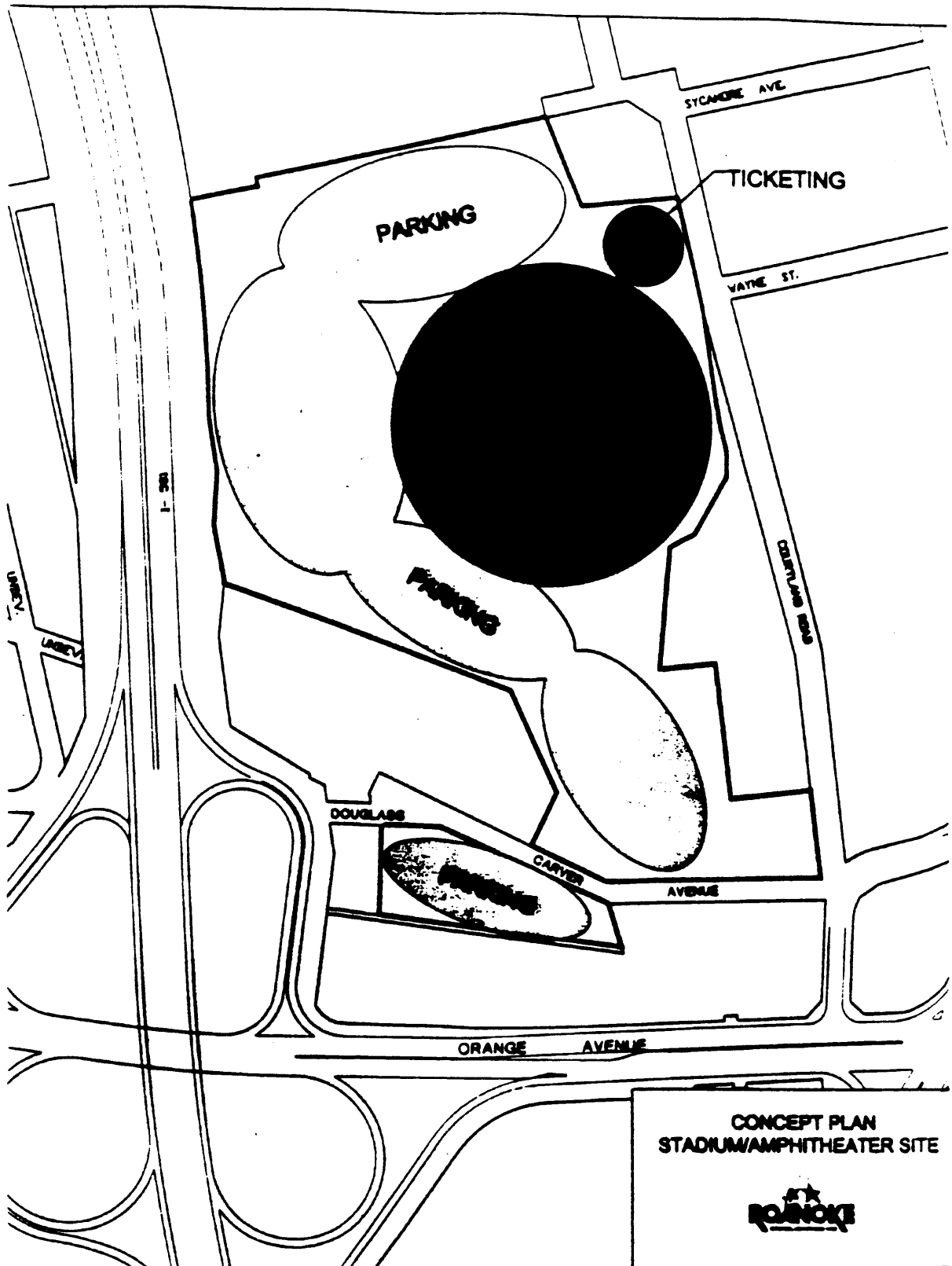


EXHIBIT C
ADJOINING PROPERTY OWNERS

Tax No.	Property Address	Property Owner
2040101	1823 Dunbar Street, NW	Roanoke Redevelopment and Housing Authority P O Box 6359 Roanoke, VA 24017
2041315	1515 Dunbar Street, NW	James W. Perdue Revocable Trust 1515 Dunbar Street, NW Roanoke, VA 24012
2041316	Dunbar Street, NW	James W. Perdue 1515 Dunbar Street, NW Roanoke, VA 24012
2041317 2041318	Dunbar Street, NW	Richard N. Ross 1824 Fremont Circle, NW Roanoke, VA 24017
2041319	Dunbar Street, NW	James K. Bowers, Jr. Antwone Dixon, et al 3224 Trinkle Avenue, NW Roanoke, VA 24012
2041341	210 Carver Avenue, NW	Robert R. Young 210 Carver Avenue, NW Roanoke, VA 24012
2041703	Carver Avenue, NW	TLC Properties, Inc. c/o Ben R. Miller, Jr. P O Box 66338 Baton Rouge, LA 70896
2041815	Carver Avenue, NW	Fred C. Ellis P O Box 12067 Roanoke, VA 24022
3020101	Orange Avenue, NE	Trustees, First Baptist Church P O Box 2799 Roanoke, VA 24001
3020102	308 Orange Avenue, NE	Shivam, LLC 308 Orange Avenue, NE Roanoke, VA 24012
3020117	326 Orange Avenue, NE	Blue Eagle Partnership P O Box 12068 Roanoke, VA 240122
3020118	316 Orange Avenue, NE	Jack E. May Family Trust 1920 Royal Oak Drive Lynchburg, VA 24503

3020201 3070901	1212 Williamson Road, NE Carver Avenue, NE	Randall Sheetz 315 S. Stewart Street Winchester, VA 22601
3070103 3070104 3070120 3070121 3080433	Dunbar Street, NW 1802 Courtland Road, NE	City of Roanoke
3070108	Lukens Street, NE	Ernest D. Tate, Trustee 126 Overlook Circle Moneta, VA 24121
3070113	Dunbar Street, NW	Yolanda L. Bell 1619 Dunbar Street, NW Roanoke, VA 24012
3070407	110 Wayne Street, NE	Farrell Properties, LTD P O Box 12608 Roanoke, VA 24027
3070320	Courtland Avenue, NE	Alice H. Baker 4101 Hazelridge Road, NW Roanoke, VA 24012
3070105	Lukens Street, NE	Arthur C. Edwards 1127 Melrose Avenue, NW Roanoke, VA 24017
3070317	1502 Williamson Road, NE	Calvin W. and Mary C. Powers P O Box 12068 Roanoke, VA 24022
3070504	1330 Courtland Road, NE	Southeastern Building Corp. 900 Ridgefield Drive, #250 Raleigh, NC 27609
3070512	Courtland Road, NE	Warren L. Baker, et als 4101 Hazelridge Road, NW Roanoke, VA 24012
3070517	410 Carver Avenue, NE	Stanley A. Eichelberger 410 Carver Avenue, NE Roanoke, VA 24012

IN THE COUNCIL OF THE CITY OF ROANOKE, VIRGINIA,

AN ORDINANCE to amend §36.1-3, Code of the City of Roanoke (1979), as amended, and Sheet Nos. 204 and 307, Sectional 1976 Zone Map, City of Roanoke, to rezone certain property within the City; and dispensing with the second reading of this ordinance.

WHEREAS, the City Planning Commission and Calvin W. Powers, Mary C. Powers, Theodore J. Sutton and Judy P. Sutton have made application to the Council of the City of Roanoke to have the hereinafter described property rezoned from LM, Light Manufacturing District, and C-2, General Commercial District, to C-3, Central Business District; and

WHEREAS, the City Planning Commission, which after giving proper notice to all concerned as required by §36.1-693, Code of the City of Roanoke (1979), as amended, and after conducting a public hearing on the matter, has made its recommendation to Council; and

WHEREAS, a public hearing was held by City Council on said application at its meeting on May 20, 2002, after due and timely notice thereof as required by §36.1-693, Code of the City of Roanoke (1979), as amended, at which hearing all parties in interest and citizens were given an opportunity to be heard, both for and against the proposed rezoning; and

WHEREAS, this Council, after considering the aforesaid application, the recommendation made to the Council by the Planning Commission, the City's

Comprehensive Plan, and the matters presented at the public hearing, is of the opinion that the hereinafter described property should be rezoned as herein provided, as the rezoning is consistent with Vision 2001-2020, the City's adopted Comprehensive Plan.

THEREFORE, BE IT ORDAINED by the Council of the City of Roanoke that:

1. Section 36.1-3, Code of the City of Roanoke (1979), as amended, and Sheet Nos. 204 and 307 of the Sectional 1976 Zone Map, City of Roanoke, be amended in the following particular and no other:

That tract of land lying generally west of Courtland Avenue, north of Orange Avenue and south of Sycamore Avenue, comprising approximately 24.5 acres, more or less, being in the City of Roanoke, Virginia, consisting of Official Tax Nos. 3070301 through 3070310, inclusive; 3070313 through 3070316, inclusive; 2041816 and 2041817, are hereby rezoned from LM, Light Manufacturing District, to C-3, Central Business District, as set forth in the Petition filed in the Office of the City Clerk on March 13, 2002, and that Sheet Nos. 204 and 307 of the Zone Map be changed in this respect; and Official Tax Nos. 3070501, 3070318 and 3070319, are hereby rezoned from C-2, General Commercial District, to C-3, Central Business District, as set forth in the Petition filed in the Office of the City Clerk on March 13, 2002, and that Sheet No. 307 of the Zone Map be changed in this respect.

2. Pursuant to the provisions of Section 12 of the City Charter, the second reading of this ordinance by title is hereby dispensed with.

ATTEST:

City Clerk.



May 20, 2002

Honorable Ralph K. Smith, Mayor
Honorable William H. Carder, Vice Mayor
Honorable William D. Bestpitch, Council Member
Honorable C. Nelson Harris, Council Member
Honorable W. Alvin Hudson, Jr., Council Member
Honorable William White, Sr., Council Member
Honorable Linda F. Wyatt, Council Member

Dear Mayor Smith and Members of City Council:

SUBJECT: Blue Ridge Zoological
Society of Virginia, Inc.,
Lease and Agreement

Background:

The Blue Ridge Zoological Society of Virginia, Inc., (BRZSV), (formerly Mill Mountain Zoo, Inc.), was created in 1976 by the Roanoke Jaycees, Inc. to take over the operation of the Zoo. The original lease of the property for zoo purposes to Mill Mountain Zoo, Inc., was authorized on September 7, 1976.

Considerations:

The current five-year lease with BRZSV was authorized by Ordinance No. 33231-012197, and expired December 31, 2001. BRZSV has requested that the revised lease (Attachment A) be continued for a term of five (5) years, ending December 31, 2006. The lease shall provide for termination at any time with sixty (60) days written notice by either party and a total lease area of approximately 8.5 acres, which includes an additional 2.9 acres to complete the Mill Mountain Zoo's Master Plan. The rental rate of \$10.00/yr is contingent upon the Mill Mountain Zoo continuing full accreditation from the American Zoo and Aquarium Association.

Honorable Mayor and Members of Council
May 20, 2002
Page 2

Recommended Action:

Following a public hearing, authorize the City Manager to execute a Lease Agreement with BRZSV for the land occupied by the Zoo for a term of five (5) years, ending December 31, 2006, in a form approved by the City Attorney.

Respectfully submitted,



Darlene L. Burcham
City Manager

DLB/kj

Attachment

c: Rolanda A. Johnson, Assistant City Manager for Community Development
Mary F. Parker, City Clerk
William M. Hackworth, City Attorney
Jesse A. Hall, Director of Finance
Steven B. Buschor, Director of Parks and Recreation
Lynn H. Meyer, President of Blue Ridge Zoological Society of Virginia
Beth Poff, Executive Director of Blue Ridge Zoological Society of Virginia

#CM02-00097

THIS LEASE AND AGREEMENT (hereinafter referred to as "Agreement"), made and entered into this the 1st day of January, 2002, by and between the **CITY OF ROANOKE**, hereinafter referred to as the "City", and **BLUE RIDGE ZOOLOGICAL SOCIETY OF VIRGINIA, INC.**, hereinafter referred to as the "Lessee":

W I T N E S S E T H:

WHEREAS, the City is the owner of certain land located in the City of Roanoke being the top portion of that land commonly referred to as "Mill Mountain," which heretofore was donated to the City for use and development as a recreational area for the general public; and

WHEREAS, situate on the aforementioned land is a facility commonly known as "Mill Mountain Zoo;" and

WHEREAS, Blue Ridge Zoological Society of Virginia, Inc., a non-profit organization, having offered to enter into an agreement with the City providing for its lease of the area in which the Mill Mountain Zoo is located and providing for the corporation's continued operation of the Mill Mountain Zoo, the City considers that such proposal would further the purposes for which the land is held by it.

NOW, THEREFORE, the parties hereto enter into the following agreement concerning the operation, maintenance and leasing of the aforesaid Mill Mountain Zoo facility:

1. Leased Premises: This Agreement shall govern that certain parcel of land on the top of Mill Mountain described in, and attached to this Agreement as, Exhibit A, the description in such Exhibit A being incorporated by reference herein, and that certain facility thereon identified as Mill Mountain Zoo, together with all the improvements, equipment, supplies, tools and machinery located thereon, regardless of when made, added to, or placed on such parcel, and currently used in the operation of the Mill Mountain Zoo, such land, improvements and personalty being collectively referred to as the Premises. The Premises shall not include the miniature Zoo Choo train, its facilities, and equipment, the operation of which shall be governed by an agreement among the City, Blue Ridge Zoological Society of Virginia, Inc., and the Roanoke Jaycees, Inc., a copy of which is attached hereto as Exhibit B, or any amendment thereof, and incorporated herein, and all equipment, machinery and tools purchased by the Lessee and used in the operation of the Mill Mountain Zoo and not permanently attached to the real property of the City. Title to the Premises and any of the articles of the property owned by the City on the first (1st) day of this Agreement shall remain in the City. Furthermore, the Lessee will have reasonable and necessary rights of access to the Premises over adjacent property of the City. At the conclusion of this Agreement, the Lessee shall deliver to the City the Premises in the same condition as the Premises, or any additions thereto, were originally received, less normal wear and tear.

2. Consideration and Term: For and in consideration of the Lessee operating and maintaining a zoo for animals for the benefit of the general public ("Mill Mountain Zoo") and other good and valuable consideration, the sufficiency of which is acknowledged,

the City does hereby lease the Premises to the Lessee for the sum of Ten Dollars and No Cents (\$10.00) per year payable annually in advance for the term commencing on the 1st day of January, 2002, and ending on the 31st day of December, 2006, subject to the termination rights of the City and the Lessee as set forth below.

3. Termination: This Agreement may be terminated by either party at any time, for any cause, or no cause, upon sixty (60) days written notice signed on behalf of either party.

4. Services provided by City: The Lessee shall pay for all utilities, including water, sewer, septic, telephone, cable, gas and electricity, consumed or used by the Lessee. In the event the Lessee connects to the sanitary sewer system operated and maintained by the City, the cost of such connection, operation and maintenance shall be paid by Lessee. The City shall not be obligated hereunder to make any capital improvement or expenditure of any kind on the leased Premises, and the City shall be under no duty to repair or replace the Premises, or any part or portion thereof, during the term of this Agreement. The City shall provide a maximum of 35 hours tree maintenance and removal services per calendar year. The Lessee will be responsible for such services beyond 35 hours. The Lessee shall not remove any tree, or maintain any tree, on the Premises, until such removal or maintenance has been reviewed and approved in writing by the City's Urban Forester.

5. Insurance: The Lessee shall maintain in force and effect throughout the term of this Agreement commercial general liability insurance with limits of not less than One Million Dollars and No Cents (\$1,000,000.00) combined single limit per occurrence

including death or personal injury and property damage, with the City and its officials, agents, employees and volunteers to be named as additional insureds with an endorsement from the insurer. A certificate of insurance, evidencing all insurance and coverages required by this Agreement, shall be attached as Exhibit C to this Agreement, and a current certificate of such insurance shall be maintained on file in the Office of the City Clerk of the City of Roanoke, Virginia, for each period of coverage upon the renewal of any such insurance. Lessee shall obtain and maintain during the term of this Agreement:

(A) workers' compensation insurance coverage with limits in the statutorily required amounts; and

(B) employers' liability insurance coverage with minimum limits as follows:

- (i) \$100,000 bodily injury by accident each occurrence,
- (ii) \$500,000 bodily injury by disease (policy limit), and
- (iii) \$100,000 bodily injury by disease (each employee).

With respect to workers' compensation coverage, the Lessee's insurance company shall waive rights of subrogation against the City, its officers, employees, agents and volunteers.

6. **Indemnification and Hold Harmless:** The Lessee agrees to indemnify and hold harmless the City, its officers, agents, volunteers, and employees, from any and all claims, legal actions and judgments and for expenses incurred in this regard, arising out of the Lessee's intentional acts and negligent acts or omissions with respect to the rights or privileges granted by the City to the Lessee in this Agreement.

7. Compliance with Law: The Lessee agrees to design, construct, operate and maintain the Premises and the Mill Mountain Zoo in compliance with all applicable laws, regulations and ordinances, and the Lessee agrees to employ and provide sufficient personnel for the proper operation of the Mill Mountain Zoo. The Lessee shall operate and maintain the Mill Mountain Zoo in a manner which meets the requirements of the American Zoo and Aquarium Association ("Association"), and the Lessee shall receive, and have effective, unconditional and full accreditation from the American Zoo and Aquarium Association ("AZA") during the entire term of this Agreement. A copy of any certificate or letter granting such accreditation, setting forth the term of accreditation, shall be forwarded to the Director of Parks and Recreation for the City of Roanoke within ten (10) business days after receipt of the same by Lessee. A copy of such letter or certificate in effect on the date of this Agreement shall be attached as Exhibit D to this Agreement. The rental rate of \$10.00 per year is contingent upon the Lessee obtaining accreditation. If such accreditation is not granted, renewed, or otherwise in effect, for any reason, the rental rate will be five thousand ten dollars and no cents (\$5,010.00) per year, payable on April 1st of the next calendar year this Agreement is in effect between the parties. If accreditation guidelines change before this Agreement expires or is terminated, making it difficult for the Lessee to maintain AZA accreditation, the yearly rental rate may be amended by mutual agreement of the parties in accordance with the terms of this Agreement.

8. Ownership of animals: The animals on hand at the commencement of this Agreement shall be the property of the Lessee and may be disposed of or sold by the Lessee

so long as the Premises are subject to this Agreement. Animals born to or sired after the commencement of this Agreement, and all breeding interest therein or rights thereto shall be the property of the Lessee when the animals are born, sired or otherwise acquired. All animals purchased by the Lessee shall remain the property of the Lessee and may be sold or otherwise disposed of by said Lessee. The Lessee shall provide adequate care and housing for all animals upon and after the commencement of this Agreement.

9. Altering Premises by Lessee: The City agrees that the Lessee shall have the right to alter or remove existing and future improvements or facilities on the Premises, subject in all such cases, to the written approval of the City Manager of the City of Roanoke first obtained, and upon condition the City determines that any such activity is not detrimental to the City's overall development of Mill Mountain as a recreational area and subject further to the Lessee providing, prior to any construction or similar activity, such liability insurance and labor and material payment bonding as may be required by the City. The Lessee recognizes and agrees that there shall be no expansion of the boundaries of the Mill Mountain Zoo without prior approval of Roanoke City Council.

10. Additions to Premises. All facilities subsequently constructed by the Lessee and permanently attached to the real property owned by the City shall become the property of the City at the termination of this Agreement. All equipment, machinery and tools purchased by the Lessee and used in the operation of the Mill Mountain Zoo and not permanently attached to the real property of the City shall remain the property of the Lessee.

11. Concession: Subject to Exhibit B, the Lessee shall have the exclusive control of and right to all concession sales and revenue therefrom on the Premises during the term of this Agreement.

12. Operation of Mill Mountain Zoo: All matters of management, operation and policy for the Mill Mountain Zoo, including admissions charges, hours of operation and the like shall be in the discretion of the Lessee, subject to the rights of the City set out in Section No. 1 of this Agreement and Exhibit B reference therein, but the Lessee agrees to comply with all laws and ordinances applicable to the Premises and, in particular, with the City's ordinances, rules, and regulations relative to the use of Mill Mountain. Any applicable admissions taxes imposed, generally, by the City, the Commonwealth of Virginia or other governmental agencies having jurisdiction, shall be collected, reported, and accounted for, by the Lessee, and paid to the City, as provided by general ordinance or law.

13. Compliance with environmental protection laws:

(a) The Lessee covenants and agrees to design, construct, maintain and operate the Premises and the Mill Mountain Zoo strictly in accordance with all applicable federal, state and local environmental protection laws, regulations, rules and orders, including but not limited to those laws relating to the storage, disposal and presence of Hazardous Substances (the term "Hazardous Substances" used herein has the same meaning as given that term and to the term "hazardous wastes" in 42 U.S.C. §9601), disposal of solid waste, release or emission of pollutants or Hazardous Substances into the air or soil or into groundwater or other waters, applicable water and sewer regulations, and erosion and sedimentation control

(collectively, "Environmental Law"). The Lessee covenants that it has either acquired heretofore or shall acquire, prior to or at the time required by applicable law, all environmental permits and licenses required by any Environmental Law in connection with the maintenance and operation of the Mill Mountain Zoo.

(b) The Lessee covenants that it shall indemnify, defend and hold the City, its successors, assigns, directors, officers, employees, volunteers, agents and lenders harmless from all response costs, damages, expenses, claims, fines and penalties incurred by the City, its successors, assigns, directors, officers, employees, volunteers, agents and lenders as the result of any violation by Lessee, or any predecessor in interest to or any person acting with permission of Lessee of any Environmental Law or as the result of any necessary repair, cleanup, closure or detoxification of the property upon which the Mill Mountain Zoo is located or upon land in the vicinity of the Mill Mountain Zoo if due to conditions caused by the Lessee, predecessor in interest to or any person acting with permission of Lessee, or as a result of a misrepresentation made by the City based upon information supplied by the Lessee to the City. These provisions in this section shall survive the termination of this Agreement.

(c) The Lessee shall immediately notify and advise the City of (i) any and all enforcement, cleanup, removal, investigation or other governmental or regulatory actions instituted or threatened against the Lessee with respect to any Environmental Law applicable to the Zoo, and (ii) any and all claims made or threatened by any third person against the City, or the Lessee relating to any Environmental Law applicable to the City or the Lessee,

or the Mill Mountain Zoo or to injury to any person or property because of a Hazardous Substance on or from the Mill Mountain Zoo.

(d) The Lessee hereby grants and gives to the City, its agents and employees the right and license to enter the Mill Mountain Zoo, without notice, at any reasonable time to inspect the Mill Mountain Zoo or to conduct a reasonable environmental investigation, including but not limited to an environmental assessment or audit of the Mill Mountain Zoo to satisfy the City that the Mill Mountain Zoo is free from environmental contaminations and hazards. The City may employ engineers to conduct such investigations on the City's behalf, and the Lessee shall give to such engineers the same rights and licenses as the City may have pursuant to this Section. The Lessee shall from time to time and upon the request of the City, give to the City or to whomever the City may designate such assurances as may be necessary to show that the Mill Mountain Zoo is in compliance with any and all Environmental Law. The City shall use its best efforts to minimize interference with the Lessee's business but shall not be liable for any interference or harm caused by the City's exercise of its rights under this Section.

(e) At the commencement date of this Agreement, and on January 1 of each year thereafter (all such dates being hereinafter called "Disclosure Dates"), including January 1 of the year after the termination of this Agreement, the Lessee shall disclose in writing to the City Manager and the Environmental Specialist for the City of Roanoke, 215 Church Avenue, S.W., Room 364, Roanoke, Virginia 24011, the names and amounts of all Hazardous Substances, which were stored, used or disposed of at the Mill Mountain Zoo, or

which the Lessee intends to store, use or dispose of at the Mill Mountain Zoo, for the year prior to and after each Disclosure Date. The City, in its sole and absolute discretion, may consent or decline to consent to the Lessee's storage or use, or both, of any Hazardous Substance, provided that (i) the Lessee shall store such matter in leakproof containers, (ii) such storage and use does not constitute a violation of any Environmental Law, and (iii) the Lessee shall use such matter in accordance with all Environmental Law.

14. Removal of Structures and Animals:

(a) At the expiration or termination of the Agreement, if it becomes necessary to remove structures on the premises, or to dispose of, or transfer animals, Lessee agrees to remove such structures, or dispose of, or transfer such animals at its own expense within a reasonable time after notice from the City. All demolition and related work, and all disposition or transfer of animals, shall be done diligently and in conformity with all legal and safety requirements, in a good and workmanlike manner, and in accordance with any reasonable standards required by the City.

(b) In the event that the Agreement is terminated by either party at any time, or in the event that the Agreement lapses by its own terms, the Lessee will take on the responsibility of properly closing the Zoo and maintaining, relocating or selling in a proper manner the collection of animals acquired or maintained by the Lessee at the time of termination or lapse. Such relocation or sale of animals shall take place in accordance with the guidelines and regulations promulgated by the American Zoo and Aquarium Association

and the United States Department of Agriculture in effect at the time of such termination or lapse.

15. Assignment of Lease: The Lessee shall have no right to assign or sublet the Premises, or any portion thereof, to any other party without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed. If such consent is given, however, it is with the understanding that notwithstanding the sublease or assignment, the Lessee shall, nevertheless remain liable to the City pursuant to the provisions in this Agreement. The Lessee shall deliver a fully-executed copy of any permitted assignment or sublease to the City immediately upon its execution. In the event the City consents to an assignment or sublease, such consent shall not approve future subleases or assignments of all or any portion of the Premises, which right is specifically reserved.

16. Non-Discrimination: During the performance of this Agreement, the Lessee agrees as follows:

(a) The Lessee will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Lessee. The Lessee agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

(b) The Lessee, in all solicitations or advertisements for employees placed by or on behalf of the Lessee, will state that such Lessee is an equal opportunity employer.

(c) Notices, advertisement and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

(d) The Lessee will include the provisions of the foregoing subsections 16(a), (b) and (c) in every contract or purchase order of over ten thousand dollars and no cents (\$10,000.00) so that the provisions will be binding upon each contractor or vendor.

17. The Lessee will: (i) provide a drug-free workplace for the Lessee's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Lessee's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Lessee that the Lessee maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor. For the purpose of this subsection, "drug-free workplace" means a site for the performance of work done in connection with this contract.

18. Negotiation: This Agreement has been fully negotiated by and between the parties and shall be construed as if both parties had an equal responsibility in the drafting hereof.

19. Entire Agreement: This Agreement represents the entire integrated agreement between the parties and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement shall not be amended or modified except by written instrument signed by both parties.

20. Successors: Except as otherwise specifically provided herein, the terms and provisions of this Agreement shall be binding upon, and shall inure to the benefit of, the successors and assigns of the parties.

21. No Waiver: No failure of any party to insist upon strict observance of any provision of this Agreement, and no custom or practice of the parties at variance with the terms hereof, shall be deemed a waiver of any provision of this Agreement in any instance.

22. Notice: Any notice, request, or demand given or required to be given under this Agreement shall, except as otherwise expressly provided herein, be in writing and shall be deemed to have been given when mailed by United States Registered Mail, postage prepaid, to the other party at the address stated below.

To the City: City Manager
Room 364, Noel C. Taylor Municipal Building
215 Church Avenue, S. W.
Roanoke, Virginia 24011

To the Lessee: Blue Ridge Zoological Society of Virginia, Inc.
c/o _____

IN WITNESS WHEREOF, the parties hereto have executed the same as of the day
and year first hereinabove written:

ATTEST:

CITY OF ROANOKE

Mary F. Parker, City Clerk

By _____
Darlene L. Burcham,
City Manager

ATTEST:

**BLUE RIDGE ZOOLOGICAL
SOCIETY OF VIRGINIA, INC.**

By _____
Secretary

By _____
President

Approved as to Form:

Approved as to Execution:

Assistant City Attorney

Assistant City Attorney

551

IN THE COUNCIL OF THE CITY OF ROANOKE, VIRGINIA,

AN ORDINANCE authorizing the lease of certain City-owned property to the Blue Ridge Zoological Society of Virginia, Inc, upon certain terms and conditions; and dispensing with the second reading of this ordinance.

WHEREAS, a public hearing was held on May 20, 2002, pursuant to §§15.2-1800(B) and 1813, Code of Virginia (1950), as amended, at which hearing all parties in interest and citizens were afforded an opportunity to be heard on said conveyance.

BE IT ORDAINED by the Council of the City of Roanoke that:

1. The City Manager and the City Clerk are authorized to execute and attest, respectively, in form approved by the City Attorney, a lease agreement with the Blue Ridge Zoological Society of Virginia for the Mill Mountain Zoo located on Mill Mountain, for a five-year term beginning January 1, 2002, and ending December 31, 2006, at a total lease fee of \$50.00, upon such terms and conditions as more particularly described in the City Manager's letter to Council dated May 20, 2002, and the lease attached thereto.

2. Pursuant to the provisions of Section 12 of the City Charter, the second reading of this ordinance by title is hereby dispensed with.

ATTEST:

City Clerk.

IN THE COUNCIL OF THE CITY OF ROANOKE, VIRGINIA,

AN ORDINANCE amending §32-217, Levied rate, of Article IX, Admissions tax, of Chapter 32, Taxation, of the Code of the City of Roanoke (1979), as amended, in order to increase the admissions tax on the stated admission charge to any place of amusement or entertainment from five (5) percent to six and one-half (6.5) percent; and providing for an effective date.

BE IT ORDAINED by the Council of the City of Roanoke as follows:

1. Section 32-217, Levied rate, of Article IX, Admissions tax, of Chapter 32, Taxation, of the Code of the City of Roanoke (1979), as amended, is hereby amended and reordained to read and provide as follows:

§32-217. Levied rate.

A tax on the amount paid for the admission to any place of amusement or entertainment is hereby levied upon and shall be collected from every person who pays an admission charge to such place. The rate of this tax shall be six and one-half (6.5) percent of the stated admission charge for each person admitted or for each ticket sold. Except as otherwise provided in section 32-218, if any person is admitted free to any place of amusement or entertainment at any time when an admission charge is made to other persons, an equivalent tax is hereby levied upon, and shall be collected from, such person so admitted free of an admission charge, which tax shall be based on the price charged to such other persons of the same class for the same or similar accommodations.

3. This ordinance shall be in full force on and after July 1, 2002.

ATTEST:

City Clerk.

WMB

IN THE COUNCIL OF THE CITY OF ROANOKE, VIRGINIA,

AN ORDINANCE amending certain fees and charges, establishing certain new fees and charges with regard to subdivision and zoning fees, and amending the Fee Compendium, and providing for an effective date.

BE IT ORDAINED by the Council of the City of Roanoke as follows:

1. Subdivision and zoning fees shall be amended to include the following:

\$500.00	Amendment to conditions of a conditional rezoning
\$250.00	Appeal to the Board of Zoning Appeals of the zoning administrator's decision
\$100.00	Application for a special exception from the Board of Zoning Appeals for a parcel which is zoned for a residential use
\$200.00	Application for a special exception from the Board of Zoning Appeals for a parcel which is zoned for a commercial use
\$190.00	Application for a variance from the Board of Zoning Appeals
\$500.00, plus \$75.00 per acre, or any portion thereof	Review of a comprehensive development plan
\$400.00, plus \$25.00 per acre, or any portion thereof	Application for rezoning to a single family residential district designation

\$800.00, plus \$25.00 per acre, or any portion thereof	Application for rezoning to a multi-family residential district designation
\$900.00, plus \$25.00 per acre, or any portion thereof	Application for a rezoning to a commercial district designation
\$1,000.00, plus \$25.00 per acre, or any portion thereof	Application for a rezoning to a planned unit development designation
\$100.00, plus \$25.00 per acre, or any portion thereof	Application for zoning a parcel to historic district designation
\$25.00	Application for review of Basic Development Plan and a zoning permit
\$150.00	Application for zoning verification
\$50.00, for 1-3 lots; \$220.00, plus 3 lots	Review of subdivision plat

2. The Fee Compendium of the City, maintained by the Director of Finance and authorized and approved by the City Council by Resolution No. 32412-032795, adopted March 27, 1995, effective as of that date, shall be amended to reflect the new and amended fees with regard to subdivision and zoning fees.

3. Resolution No. 32412-032795 is hereby amended to the extent and only to the extent of any inconsistency with this Ordinance.

4. The fees established by this Ordinance shall remain in effect until amended by this Council.

5. This Ordinance shall be in full force and effect on July 1, 2002.

ATTEST:

City Clerk.